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ABSTRACT

This report proposes a restructuring of the statutory framework for dealing with PINS (persons in need of supervision) defined as children under 16 whom the court has determined to be incorrigible, ungovernable or habitually disobedient and beyond the lawful control of parents or other lawful authority. The proposal, as described in the recommendations which conclude this report, is built on existing New York statutory mandates, procedures, and funding streams which allow intervention to secure services and placement for a range of juvenile problems and misbehavior. Following a brief history of Statewide Youth Advocacy, Inc., background information is provided on the kinds of adolescent problems within PINS jurisdiction as well as characteristics of the families and individuals involved, including youths who have been neglected or abused, those with special education needs or emotional disturbances, runaways, and delinquents. The petitioning process and its outcomes are described, and changes in expectations and objectives are reviewed in light of recent legislation. Service systems for PINS are described, including out-of-home care, Department of Social Services Preventive Services, Division for Youth local assistance, and mental health services. The role of the schools is discussed and suggestions for improved service delivery are provided including central intake, emergency shelters, intensive home and community-based intervention, and a juvenile mediation process. Recommendations focus on redefining the role of family court, and techniques for structuring the planning and coordination of service delivery. The appendices contain information on placement costs and a glossary of terms. (JAC)

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PINS Jurisdiction in New York State Today

Critique and Recommendations for Reform

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SYA

Statewide Youth Advocacy, Inc.

PINS JURISDICTION IN NEW YORK STATE TODAY:

CRITIQUE AND RECOMMENDATIONS

BY

Patricia A. Nevergold, Esq.
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CG 017082

1983

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INTRODUCTION

Status offender jurisdiction draws into its wide sweep almost the entire range of juvenile behavior, family problems, and conflict between children and parents. The fundamental nature of the issues it addresses gives an ideological and political content to the debate over reform of PINS jurisdiction. The arguments tend to center on questions about the appropriateness of state intervention in noncriminal activities and in the enforcement of parental authority. In recent years, the PINS debate has been shaped almost entirely by these philosophical questions, the complexities of which have often drawn attention away from the urgent reality of children and families in trouble. Unfortunately, that debate has also obscured an area of growing consensus—recognition that PINS have complicated service needs, needs which are best addressed within the community and preferably without the involvement of the court.

While the service issues which emerge from an attempt to build a workable policy based on that consensus are difficult, they are certainly more amenable to solution than are the ideological questions arising from discussions of scope and appropriateness of status offender jurisdiction. SYA set out to lay a framework for such a policy by looking for the answers to a few basic questions:

1. What problems underlie the PINS label? Who are PINS?
2. What alternative jurisdictions (legal and administrative) might also be used to address those same problems?
3. What basic services are needed to help troubled adolescents and their families?
4. What legislative changes, if any, are necessary to best assure the availability and delivery of the requisite assistance?

We have concluded that a major restructuring of the statutory framework is in order. The result of revision must be to enable an improved—not a diminished—response to the problems of those families which now turn to the family court for help with their adolescent children.

The proposed restructuring, as described in the recommendations which conclude this report, is built upon existing statutory mandates, procedures, and funding

streams which allow intervention to secure services and placement for almost the entire range of juvenile problems and misbehavior. These mandates, however, are often ignored—perhaps because there is neither a coordinated nor a full and efficient use of the established procedures and funding streams. The recommendations detail an aggressive and creative use of existing service and placment mechanisms, a use which can serve to make court involvement unnecessary except as the "last resort" to compel an agency response in those cases where there is a mandate for service.

It is our hope that the data and specific proposals in this paper will serve as a substantive basis for thoughtful discussion, assisting in the process of turning public attention to the critical question of how to provide help to troubled adolescents and their families.

History of SYA

From its first days, Statewide Youth Advocacy, Inc. has worked to assure that children receive the public services they need to help them grow into responsible and healthy adulthood. SYA began its efforts in child advocacy nearly seven years ago as a special project of the New York Civil Liberties Union, focusing primarily on implementing the educational rights of children.

A long-range education agenda grew out of the findings in SYA's 1978 report, Failing Students - Failing Schools: A Study of Dropouts and Discipline in New York State. Both the research and SYA's advocacy experience highlighted the relationship between truancy and unresolved school problems, especially those arising from a student's unaddressed handicapping conditions. This led in turn to a look at the family court's response to these youth.

With the intent of learning more about how to encourage provision of timely assistance for truants and other troubled adolescents, in 1979 SYA began its current Status Offender Project. Working with PINS task forces in Monroe and Onondaga Counties, the Project sought to encourage and assist those localities to design practical systems to serve PINS youth out of court. Two working papers on alternative legislation and service systems for PINS were developed to aid agencies and advocates in the planning process.

In 1980, SYA turned its attention to a third children's issue—child welfare. From the beginning, the Child Welfare Advocacy Project has worked to secure full implementation of the preventive service philosophy embodied in the Child Welfare Reform Act (CWRA). SYA's Executive Director, Eve E. Block, serves on the state-

level Standards Advisory Council, participating in the development of guidelines for preventive services.

In these three areas, SYA is active at both state and local levels—analyzing policies and proposed legislation and offering training and technical assistance to innumerable local groups as well as to staff of the Division for Youth, and to county probation and social services departments. Work on the Status Offender Project has benefited from this combination of activities addressing concerns common to more than one system. We have come to recognize that though they may be called truants, PINS, older neglected children, or older foster children, in each of our three projects we are dealing with many of the same children.

Acknowledgements

Much of the documentation for this paper comes from contacts with individuals in the juvenile justice and other systems: some administrators at the state and local level and many service staff working at the county level. As part of our data gathering process, we conducted a telephone survey of fourteen county probation departments. We thank the commissioners and staff in those departments for their full and forthright contributions to our survey. Without doubt, this paper owes much of its substance and flavor to the candor of those working in the juvenile justice system.

A number of other agencies and individuals provided invaluable help. Our thanks go to the Juvenile Unit of the New York State Division of Probation for information provided to us, and especially to David J. Singer and Francis N. Smith for their enthusiasm and interest as well as their patience in answering our various questions. The New York State Council on Children and Families generously gave us data specifically organized for our purposes; in particular, we thank Robert P. Ingalls for his assistance. We appreciate also the help of the Legal Aid Society of New York City, and especially the thoughtful insights of Janet Fink, Esq.

Over the past years, we have turned to a number of individuals for their suggestions and response to our recommendations; while a listing of those who have aided us risks omission of some, we would not wish to go without expressing our thanks to Merril Sobie, Associate Professor of Law at Pace University Law School, Peter Jakubowski of the Erie County Department of Youth services and to the members of the Juvenile Justice Caucus with which SYA has worked, especially to Diane Larter, Tom Schmitz, and Margaret Shaw. And to Betty Clelland who contributed far more than her accurate typing and remarkable equanimity, we say a heartfelt "thank you."

Financial support for the Status Offender Project came from the Foundation for Child Development. We are grateful to Dr. Trude Lash for her interest and keen insights into the relationship between child welfare and PINS; we thank the Foundation for its continued aid which made possible the sustained inquiry that has shaped this report and our recommendations.

I. WHO ARE PINS?

Susan, a 15-year-old girl from a small upstate city, was referred to family court by her aunt on an allegation of ungovernability. She has been living with her aunt since she was a little child. Susan has a history of serious school problems. She was disruptive, was suspended frequently, and is achieving at approximately a first-grade level. Her I.Q. is in the educable mentally retarded range. Her mother is dead (died violently after a long history of trouble with the law) and her father is an addict who essentially has no contact with Susan. Her aunt is getting on in years and has physical problems (high blood pressure, etc.). She said to the probation department that Susan breaks and throws things, steals from home, and, on occasion, has been verbally abusive and scratched and bitten her.

Susan admits that she did those things but explains that she got angry at her aunt when she refused to listen to her stories about how all the children and teachers "picked on her" at school. Still, she says that she loves her aunt and does not want to live with anyone else. But the aunt feels that she can no longer cope with Susan and does not wish her to return home.

Susan was placed in a nonsecure detention center where the social worker notes that she seems to be able to respond to affection and to individual attention. The social worker commented that Susan needs strong relations with caring adults and a highly structured environment. The recommendation was for an educational placement that will deal with Susan's emotional problems and need for structure as well as for individual instruction.

* * * * * * * * * * * *

After the third PINS petition, things did finally begin to work out for Sarah and her family. Sarah's mother filed the third petition for severe truancy, ungovernability and running away. At that time, the home situation had totally deteriorated and Sarah, who was just about to turn 16, was at serious risk of being permanently excluded from school. Sarah's mother is legally blind, disabled and has no child support.

After the PINS adjudication, Sarah was ordered to participate in an intensive multi-service program for adjudicated PINS and JDs for whom placement out of the home is the only other alternative. The program's education advocate worked with Sarah and arranged to have her school courses changed and to include her in a program of weekly tutoring; she was hooked up with a local youth development center and given a part-time job. Also the family was helped by a series of home visits

which focused on internal family functions, decision-making and techniques through which the mother could exert control. At the time the case was terminated, there appeared to be signifcantly more cooperation among family members and Sarah was abiding by reasonable rules.

* * * * * * * * * * * *

Twelve-year-old John is the son of an educated, middle-class couple. He was recently referred to family court by his mother who claims that she and his father can no longer cope with John's behavior and want him placed. Despite a high-average I.Q. and above-average reading skills, John's school performance is poor and he was truant for almost one-third of the school year.

Intermittently, John's parents had provided him with private psychiatric therapy since he was eight. He has threatened suicice on numerous occasions and once slit his wrists. His moods alternate between depression and anger—particularly towards his parents. His depression, however, seems to be increasing and he now often retreats to his room for prolonged periods.

The family court referred the case to the school district Committee on the Handicapped which found John to be emotionally handicapped and supported the probation officer's recommendation for residential placement. John has been placed as a PINS.

Should these children have been helped by the child welfare system, the school district, or mental health services without the involvement of the family court? Could the same resolutions and recommendations have been reached without the use of a PINS petition? If so, why was the court involved?

In New York State, a child who has committed one or more of a number of status offenses may be adjudicated a Person In Need of Supervision (PINS). Specifically, a PINS is a child under 16[(1)] whom the court has determined to be: "incorrigible, ungovernable or habitually disobedient and beyond the lawful control of

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(1) Family Court Act §712(b), McKinney's Consolidated Laws of New York (1981). The statute actually refers to PINS as: "a male less than sixteen and a female less than eighteen." The N.Y.S. Court of Appeals has held that age differential to be a violation of equal protection (In Re Patricia A., 21 NY 83, 1972). Although the statute has not been conformed to the Court of Appeals ruling, in practice both male and female PINS are under 16.

parent or other lawful authority:" or "who does not attend school in accord with the provision of the education law" or "who violates the provisions of Section 221.05 of the penal law" (unlawful possession of marijuana). Status offenders exhibit a variety of behaviors. While some of them may be little more than teenage excesses and immaturity, others are signals of serious individual and family problems.

The allegations, or specific charges, contained in PINS petitions loosely translate these statutory definitions into a wide variety of perceived problems: does not come home on time - does not go to school - roams the streets - sleeps with boyfriend - takes money from parents - hangs out with "undesirables." Such allegations do little to suggest solutions or even define problems. In fact, they more often hide the real problem because they focus solely and narrowly on the juvenile and his behavior. But in most cases, the families of these "wayward" teenagers are also in trouble—often in crisis—and the child's behavior is often a reaction to, as well as an integral part of, the family's problems.

A study of PINS petitions in New York City Family Court during 1980 shows the following incidence of allegations: truancy, 58%; beyond control, 49%; running away, 44%; late hours, 37%; undesirable companions, 22%; staying out overnight, 18%; drug use, 14%; stealing from home, 10%; sexual acting out, 5%; other, 39%.(2) The category "other," which accounts for 39% of the allegations, might include a variety of charges such as: refusing to bathe regularly; having an abortion against parental wishes; sleeping all day; refusing to do household chores; being "selfish and self-centered;" banging doors in reaction to a parental command; wanting to get married; attempting suicide; and "being an invertebrate [sic] liar."(3)

A profile of New York City PINS families given in the Vera Institute's Family Court Disposition Study (Table I) confirms data from other sources(4) and shows that the vast majority of youth referred as PINS are poor and come from disrupted

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(2) Vera Institute of Justice, Family Court Disposition Study (hereinafter Vera) (1980). See also, David Reed, et al, Promises, Promises...Does the Juvenile Court Deliver For Status Offenders? — The Record in Cook County, Illinois, Chicago Law Enforcement Study Group (1981).

(3) "Ungovernability: The Unjustifiable Jurisdiction," 83(7) Yale Law Journal: 1974; p. 1388 at Note 33.

(4) See for example, Promises, Promises, Chapter 3, passim.

families, usually families struggling with a host of economic, health, employment, and other problems.

TABLE I[5]

Persons In Need of Supervision in New York City

(N-892)[6]

Age

About two-thirds of PINS were 14 or older; 31% were 14, and 36% were 15 or more. 14% were younger than 13 years of age.

Ethnicity

44% of PINS were black; 41% had Spanish surnames; 14% were white, and 1% were other.

Sex

The sexes were evenly balanced; 51% male and 49% female. One-third of female PINS cases involved "away for sex" allegations, and 70% of all sex-related allegations involved girls.

Family Status

Over half of PINS (52%) came from mother-only homes; 21% were living with both natural parents; and 10% were living with their mother and her husband or boyfriend. 1% were living in an institution or foster care; 6% with other relatives.

Employment and Income

Over half (51%) of PINS came from homes in which no one was working. Overall, 39% of their families relied totally on public assistance for their income, and an additional 19% received at least some public benefits.

Petitioners

71% of petitioners were mothers. 10% (the second most frequent petitioner) were fathers. The Bureau of (school) Attendance was complainant in 6% of the cases.

Prior Court Contact

41% of PINS had some prior JD or PINS contact with the court: 24% had both PINS and JD contacts, and 14% only JD contacts. 28% of the PINS had siblings who were already known to the court.

These are the statistical characteristics of PINS and their families. The relief they are seeking from the family court is as varied as the allegations in

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(5) The data for this chart were drawn from Vera, pp. 436-470 passim.

(6) The Vera sample consisted of 892 PINS cases: the percentages given are not necessarily a percentage of that figure since not all cases include data for all questions.

the petitions. A recent report by the Criminal Justice Coordinating Council suggests the following three rough categories of PINS parents:[7]

1. "A large proportion who are overwhelmed by the effects of poverty, single-parent responsibilities and stress, and who just want a respite from the problems of their adolescent children;"
2. A small number who want "to dump their responsibilities" onto the court;[8] and
3. Another "small number of cases where the authority of the court may provide critical support and sufficient deterrent threat to abridge the immediate crisis."

While almost all children, in fact, commit status offenses, those youth who are referred to family court most often are the ones whose parents lack the emotional and economic resources to cope on their own.[9] Help for these children must address the families' problems, must seek to strengthen the family structure, and must assist the parents to exert legitimate and effective authority. Involvement of the family is necessary because most youth return to the same family situation in which their behavior problem arose.[10] However, because a PINS adjudication is a judgment against the child, the family court has no enforceable authority to involve the family in an ongoing program of voluntary services. As one commentator said: "Whatever handling the status offender receives in family court...will have minimal effect on the underlying problem of the juvenile due to its limited duration, intensity, and inclusion of the family."[11] It is this problem that

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(7) John MacWillie, III, Persons In Need of Supervision: A Policy Review and Recommendations, Criminal Justice Coordinating Council (Jan. 1982) p. 10.

(8) This is clearly contrary to the intent of Article 7 of the Family Court Act. See for example, Matter of Robert H., 383 NYS 2d 813 (1976) wherein the court states: "A PINS...petition is not a device by which parents may summarily have their children disposed of by the court; rather parents' actions must be more carefully screened than those of the accused child."

(9) Rosemary C. Sarri, "Status Offenders: Their Fate in the Juvenile Justice System," Status Offenders and the Juvenile Justice System: An Anthology, National Council on Crime and Delinquency (1978), p. 68.

(10) PINS placements are limited to 18 months (Family Court Act §756).

(11) Report of the National Juvenile Justice Assessment Center, A Preliminary National Assessment of the Status Offender and the Juvenile Justice System: Role Conflicts, Constraints and Information Gaps (April, 1980), p. 115.

contributes to the often-heard accusation that the family court is a "revolving door." It is this problem that is reflected in the number of PINS with prior court contact (39%) and the number of PINS with siblings known to the court (28%).(12)

The social and economic problems of many PINS families should not obscure the fact that many PINS juveniles do have significant behavior problems. A summary of the behavior problems for which adjudicated PINS may be removed from their homes was provided by a Council of Voluntary Child Care Agencies (COVCCA) survey of the behavior problems of the PINS in care of voluntary (nonprofit) child care agencies (see Table II).(13) The survey showed both the range and the complexity of behavior problems of PINS children—66.8% had more than three behavior problems.

TABLE II

1977 Survey of Behavior Problems of
PINS in Voluntary Child Care Agencies

Truancy	60.8%
Acting Out	49.0%
Runaways	46.0%
Stealing	36.5%
Drug Involvement	25.0%
Learning Disabilities	25.0%
Physically assaultive	20.0%
Destructive of Property	14.0%
Mental Retardation & Brain Damage	8.5%
*Other	62.5%

* Including, in order of frequency:

1. Refusal to obey
2. Intoxication
3. Behaving beyond control
4. School problems
5. Academic failures

The behaviors cataloged by COVCCA and mentioned in allegations contained in PINS petitions range from seemingly minor infractions to serious acts of violence.

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(12) Figures from Vera, pp. 439-441.

(13) Council of Voluntary Child Care Agencies, Report of Survey on PINS, Juvenile Delinquents & Adolescents in Voluntary Agencies (April 12, 1977) p. 13. (Hereinafter COVCCA.) Most PINS cases do not, of course, result in placement, but a great proportion of those PINS that are placed are placed in voluntary (nonprofit) agencies. The COVCCA study may not, therefore, reflect the behavior problems of the PINS population as a whole, but it does accurately survey the PINS in-placement population.

Clearly, PINS has become a catch-all for a diverse group of children and families which, by its convenience and all-encompassing jurisdiction, has come to involve many children whose problems might be dealt with more appropriately within another system. An analysis of PINS allegations and behaviors and review of numerous specific case histories suggest that most PINS behaviors fall into one or more of five different categories/systems, each of which offers its own means of intervention with the child and the family.

Youth Who Have Been Neglected or Abused

The relationship between PINS and child neglect or abuse is well-documented and pervades most discussions of status offender jurisdiction.(14) One New York study found that 37% of PINS were negelcted.(15) This is not surprising given the striking similarity between the statutory definitions of a neglected child and of PINS. A PINS child is one who is:

> *...incorrigible, ungovernable or habitually disobedient and beyond the lawful control of parent or other lawful authority [or who] does not attend school in accord with ..the education law.*(16)

A neglected child is one:

> *...whose physical, mental or emotional condition has been impaired (or is in danger of becoming so) as a result of parental failure to exercise a minimum degree of care.*
>
> *Impairment of emotional health and impairment of mental or emotional conduct includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as acting out or misbehavior including incorrigibility, ungovernability, or habitual truancy, provided however, that such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child.* (Emphasis added.) (17)

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(14) c.f. Vera; IJA/ABA Juvenile Justice Standards Project, Draft Standards Relating to Noncriminal Misbehavior (1977); Douglas J. Besharov, "Practice Commentaries" following §712 of the Family Court Act, McKinney's, Book 29A (1975); and "Ungovernability: The Unjustifiable Jurisdiction."

(15) "Ungovernability: The Unjustifiable Jurisdiction."

(16) Family Court Act §712(b), McKinney's.

(17) Family Court Act §1012(f), (i) and (n), McKinney's.

Despite the similarities between the two definitions and the populations they embrace, PINS jurisdiction is used more frequently for adolescents than is neglect. One reason for this is that PINS allegations are easier to prove. Neglect involves a different respondent—a parent—and also requires proof that the child's behavior was a direct result of the parent's failure to provide minimal care.(18) Proof of the behavior itself is all that is required to sustain a PINS petition. Although the law permits the family court to substitute a neglect petition for a PINS at any point in the PINS proceeding where such action appears appropriate, the court seldom does so. Substitution of petitions without the necessary proof is futile; doing it correctly requires starting all over with the work directed toward a different end and undertaken by a different system (DSS). Meanwhile, the case sits and the juvenile's behavior and problems remain unaddressed.

Another relationship between neglect petitions and PINS petitions is that the threat of a neglect investigation may act as a spur to the parent—to "head off" the neglect investigation either by filing a PINS petition or by voluntarily placing the child in foster care. In fact, DSS workers often encourage this reaction by giving the parents information on how to file a PINS petition. Also contributing to inappropriate PINS adjudications in neglect situations is the lack of communication between DSS and the probation office. Because the probation office usually does not know that a neglect petition or investigation is underway, it proceeds into court with the PINS petition. In general, as soon as probation begins to move on a PINS, the impetus for DSS action disappears.

Youth With Special Educational Needs

It is fairly clear that the majority of PINS are in need of special education because of a variety of handicapping conditions, most commonly learning disabilities or emotional disturbance. A study of juvenile intake cases (JDs and PINS) over a ten-month period in Erie County found that in 25% of the cases the child had already been classified as handicapped, and in another 28% of the cases the

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(18) Comments made by probation staff interviewed during SYA's telephone survey strongly suggest that DSS tends to pay scant attention to probation referrals for possible neglect/abuse unless there is hard evidence of serious physical abuse. In the words of one probation supervisor: "The kid has to be whipped, bruised and bleeding" before DSS will intervene.

child was strongly suspected of having a handicapping condition.[19] The COVCCA study mentioned above found that 25% of PINS placed out of their homes had learning disabilities.[20] Educational handicaps, especially learning disabilities and emotional disturbances, may be difficult to detect. They are usually accompanied or evidenced by behavior problems and the affected students dealt with by the schools as discipline problems. Undetected handicaps often result in a downward spiral of school failure, low self-esteem, acting out, truancy, and finally dropping out. It is the truant behavior which frequently becomes the basis of a PINS referral.[21]

The right of handicapped children to appropriate school placement and programs individually designed to enable them to benefit from their education are firmly established and protected by both federal and state laws. Despite these protections, many PINS have not been identified as handicapped, either by their parents or by the school, and so do not receive an education appropriate to their needs. Instead, in many cases, their behavior (most often truancy) is punished.

Emotionally Disturbed Youth

Another group of PINS-type children is closely related to the educationally handicapped. These are juveniles in need of mental hygiene service or placement. In this area, there is considerable overlapping jurisdiction with PINS, and in cases involving disturbed children, PINS placements are often used in lieu of services. In fact for two reasons, this service problem may be the most difficult of those facing PINS reformers. First, a characteristic common to almost all PINS and their families is the need for mental health services: thus, the scope of this service issue is vast. Of PINS placed with DFY, approximately 15% displayed severe or moderate psychiatric symptomatology and an additional 20% dis-

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(19) Peter A. Jakubowski, "A Modest Proposal: Amendment of 2507.3 of the Rules of Family Court." Testimony presented to the Temporary State Commission to Recodify the Family Court Act: Hearings on PINS Jurisdiction (October, 1982).

(20) COVCCA, p. 13.

(21) For a discussion of the relationship between delinquency and learning disabilities, see Association for Children and Adults with Learning Disabilities, Newsbriefs (February, 1982), p. 12, which reported the results of an ACLD study exploring the relationship of learning disabilities to delinquent behavior. Among the findings was that the incidence of learning disabilities in the delinquent group was 36.5%, and that the odds of being adjudicated delinquent were 220% greater for adolescents with learning disabilities than for their non-LD peers.

displayed mild psychiatric symptomatology. Of PINS placed with DSS, approximately 15% displayed severe or moderate psychiatric symptomatology and an additional 35% displayed mild psychiatric symptomatology.(22) Second, the "right" or entitlement to treatment or services which exists in state or federal law for children at risk of placement or educationally handicapped children, does not exist under mental hygiene law for emotionally disturbed children. Parents, then, have little recourse other than family court in the face of inadequate services or institutional resistance to the hospitalization of seriously disturbed youth.

The Mental Hygiene Law has provisions for voluntary and emergency admissions, but these (Sections 9.13 and 9.39) are permissive, not mandatory, on the part of the mental health facility, and admission criteria are often arbitrary or dependent upon availability of beds rather than existence of need. So for the most seriously disturbed, the juvenile justice system's mental health services—such as they are—may often be the only alternative.

Runaway Youth

According to the Vera study mentioned above, running away was a major allegation in 44% of PINS cases; the COVCCA study shows that runaway behavior was a problem for 46% of the youth placed in voluntary child care agencies. The causes of runaway behavior are complex, but often include family conflict and sometimes abuse. This conclusion is supported by one probation director: "In our experience, running away is often a reasonable response to an abusive or neglectful home."(23) Programs funded under the Runaway and Homeless Youth Act (RHYA) provide emergency shelter and family crisis counseling and coordinate a range of services for the runaway population. The shelter services offered are only temporary since by statute the program may house runaways for no more than 60 days. The mandate of the program is to "work towards reuniting [a] youth with his parent or guardian."(24)

Some runaway youth find temporary shelter through this program but eventually return to a nomadic existence if they cannot find a "legal" place to live other than with their parents. Some resist traditional family foster care, probably because

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(22) These figures were provided by the Out-Of-Home Project of the New York State Council on Children and Families.

(23) Testimony of R. E. Golden, Director of the Orleans County Probation Department, presented before the Temporary State Commission to Recodify the Family Court Act (October, 1982).

(24) Executive Law §532-b(2) and (1)(d), McKinney's (1982).

it does not meet their needs. Some runaways find a place to live but are unable to legalize and stabilize their situation. Juveniles living out of parents' homes consistently encounter numerous legal problems in a number of areas. Children living with grandparents, other family members, or families of friends, are often denied entry into local schools. Young people living in homes where there is no "legal" relationship between the child and the adults with supervisory responsibility must continually overcome difficulties concerning the requirements for parental consent; e.g., for school matters,[25] job training programs, access to local mental health services, etc. These problems are endemic even for those living away from home with the explicit consent of their parents. The difficulties flow from the existence of procedural or statutory presumptions in almost every law that children live either with their parents or in foster care.

It is this problem which, in part, forms the basis of the argument for emancipation legislation. However, while an emancipation procedure is needed, the number of juveniles who are capable of the full financial self-sufficiency inherent in legal emancipation is limited; thus, the beneficial effects of emancipation legislation would also be limited. The more critical problem is that nowhere in our scheme of laws and procedures dealing with children and families is there a recognition that the two traditional categories—home and foster care—do not adequately cover the current variety of living arrangements.

Young people need a mechanism through which they can legitimize their choice of residence, especially in the case of older teens for whom return home is not the best, or even always an available, option. And parents need a procedure through which they can be assured that such arrangements at least meet minumum standards for health and safety.

Delinquent Youth

Finally, many youth who are adjudicated PINS could have been charged as delinquents; i.e., they had committed acts which would be crimes if committed by an adult. In some family courts, however, there is an "unwritten policy" that certain behaviors, such as intra-family crimes (e.g., stealing from home or assault)

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(25) For the past five years, a significant part of the school advocacy with which SYA has dealt involved this issue.

and drug-related offenses, are to be handled as PINS.[26] The COVCCA study found that for about 17% of PINS placed in voluntary agencies, the reason for adjudication was the commission of a crime such as robbery, assault, arson, and auto theft.[27] This may reflect a discretionary decision by police that a PINS adjudication would be preferable to a delinquency adjudication. While police and even the probation department may act as if the PINS "label" were less undesirable than a label of "juvenile delinquent," few outside the juvenile justice system see any difference between the two.[28] In the public perception, an equal stigma attaches to both JDs and PINS. Since identical dispositional alternatives are applicable to both JDs and PINS, and since diversion is equally available to both alleged JDs and PINS, there seem to be few practical reasons for preferring the PINS procedure[29]—except, of course, from the advocate's point of view, since PINS rules out placement or detention in secure facilities.

While PINS and delinquency may overlap, there is no documentation that PINS behavior is a precursor of delinquent behavior. In fact, all indications are that PINS behaviors are part of a range of juvenile behaviors rooted in many different factors, and that these roots also yield acts which constitute crimes.[30]

Summary

Almost all PINS fall into one of the five categories discussed, and most PINS are covered by more than one classification: 1) neglected and abused, 2) educationally handicapped, 3) emotionally disturbed, 4) runaway, and 5) delinquent. Family

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(26) Vera, p. 434.

(27) COVCCA, p. 11.

(28) Some commentators note that PINS may be used in plea bargaining by prosecutors confronted with insufficient evidence to sustain a delinquency charge. (The National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP), Comparative Analysis of Standards and State Practices, Vol. V, Jurisdiction-Status Offenses (1977), p. 11.) We are informed by the Juvenile Rights Division of the Legal Aid Society that this practice does not exist in New York City. However, it does exist in upstate counties, though we are unaware of any studies of its extent. Robert E. Golden, Director of Orleans County Probation, in his previously cited testimony stated: "The existence of the PINS section in the Family Court Act results in inappropriate plea bargaining."

(29) Douglas J. Besharov, in the "Practice Commentaries," says: "Ironically, the term...PINS, which was intended to avoid the stigma of the term...juvenile delinquent...has itself become a term of disrepute and opprobrium." (McKinney's)

(30) Besharov, "Practice Commentaries."

court jurisdiction over the generic PINS category, however, offers an easier catch-all, allowing the difficult work of identifying the specific need and determining the appropriate response to be passed from one system to another—until it reaches the court.

PINS are often said to be the result of family breakdowns, or parental inability to control a child, and of unresolved, often intense, parental/child conflicts. But a history of family failure is not the only failure which a PINS child may bring to family court. To the extent that PINS is used as a substitute for other means of (or as the only way of) securing those services or placements which are the primary responsibility of another service system, then these other systems have also failed. School failure is apparent in those PINS which result from the undiagnosed educational handicaps that underlie truancy or other misbehaviors. DSS failure is seen in those PINS which result from inadequate response to neglected or abused adolescents or to requests for voluntary placements. Mental health system failure is seen in those PINS petitions and PINS placements of disturbed adolescents forced by inadequate mental health services.

Although PINS cases are almost infinitely varied in the complexity of human need they present, certain characteristics and responses are applicable in almost all cases:

1. Families of PINS evidence significant problems of their own; the presenting problem in a PINS is often not solely, or even predominantly, the child's behavior but a variety of family, social, economic, and health problems which result in a family (most often a mother) going to family court;

2. Some PINS have serious behavior problems that are difficult to treat in communities which lack specialized intensive services;

3. Most PINS could be served in several existing alternative ways: modification of educational program, provision of preventive or mental health services, or use of runaway programs;

4. Placement out of the home or required participation in services can be obtained for these children and families through child neglect procedures, the school district's Committee on the Handicapped, or a delinquency adjudication;

5. Whatever the response to these cases, to be effective it must include the coordination and delivery of a wide range of juvenile and family services.

This section has described the complicated service needs raised by PINS—needs which often must be addressed through the participation of several agencies. We have argued that the frequency of PINS petitions suggests the frequency of agency failure. The next section will examine the adjudication process with the intent of measuring the juvenile justice system's success in meeting the multi-faceted needs of PINS youth and their families.

II. HOW FAMILY COURT FAILS PINS

In the pre-1962 history of juvenile justice, all types of juvenile misconduct were grouped under the label of delinquency and regulated on the theory that the state had a responsibility to assure minimally acceptable standards of juvenile conduct. Protecting this interest was a task performed by both the juvenile court, with the power of coercive intervention in cases of children in trouble, and the child welfare system, which conceived of treatment for juveniles mainly in terms of institutional care.

In 1962, in response to then-progressive juvenile justice theory, the drafters of Article 7 of the Family Court Act created two categories of misconduct—delinquency and status offenses. The state's interest in regulating juvenile behavior remained essentially unchallenged, but new theory reasoned that status offenses were less reprehensible than delinquent acts and, therefore, the two should not bear the same stigma.(1) Whether the drafters of Article 7 hoped that their creation of a new category would generate a distinct set of disposition and treatment alternatives for status offenders is unclear. What is clear is that this did not happen. The dispositional alternatives of the court have remained identical for both JDs and PINS. The adjudicatory process, too, is the same for both.

The Petitioning Process and Its Outcomes

As the drafters saw it, a number of persons share responsibility for troubled children. Therefore, the statute empowers a number of persons to bring PINS to the attention of family court: parents, police, designees of public institutions or agencies, and other persons who are either aggrieved by or witness the actions indicating a need for supervision, may file PINS petitions.(2) Parents (usually mothers)

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(1) Committee Reports, McKinney's Session Laws of New York (1962), pp. 3433-35; Besharov, "Practice Commentaries."

(2) Family Court Act §733.

(3) Vera, p. 462.

are the overwhelming majority of petitioners. In New York City, Vera found that approximately 80% of petitioners in the study group were filed by parents;[3] in upstate New York, the percent of petitions filed by parents ranges from 30% to 70%; the remainder are filed primarily by schools.[4]

The Numbers - It is difficult to get precise statistics or statewide information about what happens to the youth who come to the attention of the family court as PINS. The absence of accurate figures places policy analysts at a considerable disadvantage, forcing them to base much of their work on estimates rather than data. The only available statewide family court disposition statistics, those of Chief Administrator of the Court (OCA), silhouette a system that picks up, shuffles around, and sooner or later washes out—often quite late in the process—most of its PINS cases. The use of OCA data poses problems in that there are internal inconsistencies for which no one (including OCA) can account. For the years 1979, 1980 and 1981, there are inexplicably large differences—over 3,000—between the number of petitions filed, as reported by OCA, and the number disposed,[5] also reported by OCA. The size of the discrepancy casts doubt on the accuracy of the figures.

OCA figures on disposed[6] petitions, however, display a greater degree of internal consistency and, more importantly, include information on the petitioning process from filing to disposal. Once a PINS petition is filed, it can be disposed (i.e., case completed) in two ways: 1) by an adjudication of "guilt" or "innocence" as to the allegations and a subsequent disposition; or 2) by a dismissal or withdrawal of the petition before adjudication (or even after).

OCA data give evidence of the pre-adjudication filtering-out of a substantial number of cases. Figures for 1981 show that family court disposed 9,949 PINS petitions. Of these, 57% were dismissed, discharged or withdrawn without an adjudication. When that percentage is added to the number of petitions which were dismissed or given suspended judgment upon adjudication, there is a total of 61% of

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(3) Vera, p. 462.

(4) These figures are estimates provided to SYA during its telephone survey of probation departments. There are no studies similar to Vera on who files petitions upstate.

(5) See Appendix for definitions of terms frequently used in this paper.

(6) While not all petitions filed in a given year will be disposed in that year, the figures should roughly equal out over a period of a year—but they do not.

disposed PINS cases which received no services ordered through the family court juvenile justice system. To put it more directly, in 61% of the PINS cases on which it took final action, the family court provided nothing.

However, State Division of Probation figures show that a significant weeding-out of inappropriate cases had taken place even before the filing of petitions. In 1981, of the 16,002 PINS complaints on which local probation departments took action, only 9,131 were referred for petitions into court.(7) These figures are consistent with probation's intake role of screening-out or "adjusting" those cases which do not require family court intervention. Nonetheless, the OCA figure of 57% of PINS petitions disposed without adjudication shows that a large number of inappropriate petitions still do reach the family court. This is in part because probation intake officers lack the power to "divert" (refuse) inappropriate petitions.(8) The Family Court Act §734(b) and (c) states that the probation service may not "compel any person to appear anywhere" or "prevent any person from filing a petition."

Dispositional Outcomes - The majority of adjudicated PINS are placed on probation. OCA figures for 1981 show that, statewide, 57% of PINS adjudications end with probation supervision.(9) The family court's other major dispositional alternative is out-of-home placement. In 1981, statewide, of those cases that proceeded to adjudication, 33% were placed. Or the figures can be expressed another way--of the total number of disposed petitions, only 14% were placed.

While it is not possible to convert these percentages into an exact number of PINS in placement during one calendar year, from available DSS and DFY statistics it appears that approximately 2,750 PINS are in placement on any given day.(10)

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(7) Figures supplied by the Juvenile Unit of the NYS Division of Probation. OCA reported 12,440 filed petitions for that year; while some of the difference is accounted for by the number of filed petitions which do not go through probation intake, the remainder of the difference cannot be currently explained.

(8) See New York City Bar Association Committee on Juvenile Justice's Report on PINS (August, 1982), p. 4, for additional discussion of this issue and their recommendation that probation be given the authority necessary to fulfill their adjustment responsibility.

(9) Thus, of the total number of disposed PINS petitions, 24.4% received a disposition of probation supervision.

(10) DSS figures show that on 12/30/82, 2,444 PINS were in DSS custody and in placement. DFY figures for 8/31/82 show 298 placed PINS in DFY custody; on an average, that figure probably ranges from 275 to 350.

Between 10% and 15% of these children are placed with the Division for Youth, the remainder with the local department of social services. Approximately 56% of social services PINS placements are institutional and 24% in foster family homes. For DFY, 28% of the placements are in family foster care and only 14% in institutional care.(11)

An analysis of the petition process, in terms of services ultimately provided, points clearly to probation as the primary service agency, both at intake and through probation supervision after adjudication. Intake officers often give counseling, act as case managers, and make referrals to outside services. However, the fact that half of all cases are screened out at intake does not necessarily mean that services are provided or the presenting problems are resolved in all of those cases. State Division of Probation reports that, statewide, 26% of PINS complaints are resolved at intake; this resolution may or may not include referral to community agencies. Only eight percent of the complaints were moved out of intake specifically through referral to community agencies.(12)

Probation figures do not indicate what type of family intervention or follow-up is offered, either at intake or during supervision. A 1979 court study in one county (Monroe) showed that of 224 PINS petitions, only 25% received more intensive supervision after court intervention than they had received before the court

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(11) These data are based on preliminary findings from the Out-Of-Home Project conducted by the NYS Council on Children and Families.

(12) Vera found that probation adjusted 34% of the sample cases; 47% dropped out pre-factfinding, and only 19% proceeded to adjudication; of which 7% were placed (6% with DSS, 1% with DFY) and only 8% received probation supervision. We are informed by the Legal Aid Society that the post-petition, or pre-factfinding, dropout rate in New York City reflects, to a great degree, the availability of the Legal Aid Social Work Unit. In 1980, over 50% of the Legal Aid PINS caseload was referred to the Social Work Unit. The following figures on the Unit were provided by the Juvenile Rights Division and are included both because they are, of themselves, enlightening as to the range of PINS service needs and because the kinds of services utilized underscore the fact that all were available and accessible prior to petitioning.

In 1980, the Social Work Unit closed 964 PINS cases, 446 of which were withdrawn or dismissed for failure to prosecute. The Unit provided direct services to over 50%, including mediation, counseling, visits with clients to agencies, home and school visits, appearances at welfare or school hearings. Over half were referred to outside agencies, as follows: 15% to Special Services for Children for treatment; 17% for education workups or to a particular alternative school program; 19% for psychiatric evaluation or treatment at mental health clinics; 5% for general assistance, including day care, housing and public assistance; 3% for medical evaluations or treatment; and 3% to the Neighborhood Youth Corps or the Job Corps.

became involved.[13] Court-ordered utilization of services as a condition of probation is subject to a number of variables: the nature of the service needs, the accessibility of those services, the individual probation officer's knowledge of available resources, and the judge's interest and knowledge of community-based programs.[14] Here, too, we note that the court process does not generate new services: what was available before petitioning is the same as what is available after.

Changes in Expectations and Objectives

Today, we view the population of PINS from a perspective that is considerably different from that of 1962. PINS jurisdiction is a mechanism which has been rendered increasingly anachronistic through changes in public expectations, legislative policies and reforms in other systems, and expanded programs of services for needy children. What was considered an appropriate case for family court in 1962 is no longer seen as appropriate in 1982. While the state today retains its interest in the welfare of juveniles, it has come to recognize that families and communities, rather than institutions, provide a better environment in which to treat troubled children.

Established in today's public policy, therefore, is a preference for meeting the needs of children at risk of placement in the least restrictive environment, with community-based services provided to families and children at home as the first point on a continuum of care. This preference is based on the benefits of family treatment and continuity of care as well as on the cost savings of non-residential services. The preference for a lower level of residential care (i.e., family foster care) over the higher level of institutional care is motivated also by a concern for the enormous expense of institutional placement, which now ranges upwards from $30,000 per year. A preference for the least restrictive environment has been established in the Child Welfare Reform Act (1979), in the laws governing the education of handicapped children (1975), and in the federal Juvenile Justice and Delinquency Prevention Act (1974).

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(13) Testimony of Lois Davis to the Temporary State Commission to Recodify the Family Court Act, referring to a study conducted by the Church Women United of Monroe County's Task Force on Courts (October, 1982).

(14) See generally, Senate Research Services, Family Court...The System That Fails All (1977).

Other changes, too, have taken place. The family court is now under fire on charges of weakness and inadequacy, charges growing out of the community's preoccupation with violent and often bizarre incidents of juvenile crime. Given the pressures on the court to direct more intense attention to serious offenders, it is not reasonable to ask that the court also continue to divert its resources to cases for which alternative intervention mechanisms are available, where community safety is not at issue, and in which the court's ability to help is most seriously questioned—even by many family court judges themselves.(15)

Clearly then, neither the policy preferences nor community interests of 1982 were the policy preferences and community interests of 1962. Thus, it is not surprising that the 1962 assumptions upon which the PINS statute were based are no longer valid in 1982. Inherent in the legislation of 1962 are assumptions that:

1. Coercive intervention is necessary to effect placement and to assure acceptance of services;

2. Inappropriate cases will be screened out by probation intake or served by other systems, allowing the court to deal with only those cases for which its authority is required; and

3 The authority of the court is necessary and sufficient to assure a disposition that will be helpful to the child.

Coercion - Is It Necessary or Meaningful?

Most cases come to the attention of family court because of the complainant's belief or hope that the court's coercive power can "make the child behave." Nothing is further from the truth. The gap between the hope and the reality arises from limitations imposed both by statute and by accepted community practices.

Under the federal Juvenile Justice Delinquency Prevention Act, states using federal funds are restricted from placing status offenders in secure institutions. That Act and the policies which prompted its passage thus reduce the ability of the family court to use the threat of forced incarceration as an instrument of PINS behavior control. Even judges recognize that PINS jurisdiction offers no

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(15) In both the upstate and New York City hearings before the Temporary State Commission to Recodify the Family Court Act, family court judges expressed their concern over the court's inability to provide the necessary help to PINS.

effective long-term mechanism for confining an actively resistant youth against his wishes.

While the adjudicatory process is supposed to protect the child against an erroneous determination of "guilt," the history of PINS petitions demonstrates that in those petitions which proceed to the factfinding stage, there is rarely a dispute over the allegations. Vera found that 95% of PINS findings resulted from partial or total admissions to the allegations. A similar study, also in New York City, found that 69% of the respondents in PINS cases admitted all, and 24% admitted part, of the allegations; in Rockland County, 94% of the respondents made full, and 6% made partial, admissions.(16) These figures suggest that most PINS actually accede in their own adjudications of misbehavior. This unsettling conclusion should be considered in light of another finding from the Vera study —that the agreement of the juvenile is often the key factor in placement dispositions.(17) Many private agencies refuse to accept a child who is unwilling to be placed. Thus, a whole process designed to assign guilt in order to effect placement may well be unnecessary. Furthermore, many of the youth who are placed against their will cannot be held—they run.(18) In placement matters then, the coercive power of the court is more illusory than real.

This contrast between the illusion and the reality of power is evident also in the area of probation supervision. In theory at least, the clout of probation derives from the implied threat of placement if conditions of probation are not complied with. However young people rapidly learn, according to many probation

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(16) "Ungovernability: The Unjustifiable Jurisdiction," p. 1389.

(17) Vera found a PINS' desire to be placed was the key factor in certain disposition decisions. To quote an Assistant Corporation Counsel from that report: "The biggest problem we have is 95% of the time even if placement is indicated (and when I say placement is indicated, the mother thinks placement is indicated; the Law Guardian even may think placement is indicated; if there's an MHS, the psychiatrist thinks placement is indicated; there have been interviews with all sorts of private agencies, they think placement is indicated), the critical thing, believe it or not, is if the girl or boy does not want to be placed, there effectively will not be a placement...unless there is consent on the part of the respondent, the agencies will not accept the placement under the theory that the boy's just going to run away, there's no need to find a place. Someone else will be willing to stay there." (p.436)

(18) In fact, the difficulty under the PINS statute of holding unwilling youth was a theme in the testimony of more than one witness before the Temporary State Commission to Recodify the Family Court Act hearings (October, 1982).

supervisors, that most often there is no real likelihood of placement.[19] As one probation supervisor said: "The probation officer must be a real fast used-car salesman." When asked in which cases probation supervision was likely to be successful, most probation supervisors answered: when the family is willing to accept help and acknowledges that the fault is not the child's alone. Considering then that probation supervision is most likely to be useful for those families which wish help, an adjudication predicated on the fault of the child seems an unnecessarily divisive mechanism for triggering that help. In complex cases (most "real" PINS cases), intervention works best when it is intensive and home-based. Examples of this kind of service are the Juvenile Intensive Supervision Programs offered by some probation departments. In general, these programs are successful in averting placement but their success depends not on the coercive order of the court but rather on the casework skills of the probation officer.

On the other hand, in a few cases, probation's authority may well be aided by the image of the black-robed judge—the symbol of courtroom authority which stands as an implied threat to extract cooperation in accepting treatment as well as abiding by other limitations on behavior. There can be little doubt that many children and families are, indeed, resistant to services and that for some the trappings of authority may force cooperation. But when resistance is real, deep-seated, and not simply bravado, treatment will not be accepted. The questionable effectiveness of coercive adjudication in regard to truancy was highlighted by the observations of the Monroe County Task Force on Courts which found that fewer than 20% of petitioned truants returned to school.[20] The authors of Promises, Promises concluded:

> *It is very clear from our court observations, the records, and the comments of the court's staff that when the MINS or his family were resistant to treatment—and that situation was remarkably common—the court was essentially unable to force cooperation.*(21)

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(19) According to the State Division of Probation figures for 1981, 4,964 children were receiving probation supervision. During the course of the year, 1,198 actions were taken to either initiate or conclude proceedings for a violation of conditions of probation supervision. In 288 of these cases, the youth was placed or incarcerated. (Those incarcerated would be over-16-year olds who had been adjudicated on the basis of a violation.) Figures provided by the Juvenile Unit of the NYS Division of Probation.

(20) Testimony of Lois Davis to the Temporary State Commission to Recodify the Family Court Act (October, 1982).

(21) Promises, Promises, p. 74.

Inappropriate Cases Reach Family Court

Underlying the statutory framework for PINS is the assumption that the overwhelming majority of petitions will be brought by reasonable people seeking reasonable ends. To prevent spurious petitions from taking court time, the statute assigned a gatekeeper function to probation intake. And, as figures given at the beginning of this section show, intake keeps almost 50% of PINS complaints out of court. Intake's authority is, however, limited by the statutory right of access which gives each complainant the right to be heard in court. Thus, punitive parents or those whose anger does not abate during the intake process can still use the threat of court-ordered punishment against their children. Some of the high number of withdrawn petitions represent a cooling of parental anger. School districts, too, are free to use the court as a primary—rather than a last-resort—weapon against truancy. Experiences in Monroe and Onondaga Counties serve as examples of the extent to which this right of access can be abused. Monroe County, from 1974 to 1978, saw a 227% increase in school-filed petitions, almost all filed directly in court without passing through intake. Those petitions accounted for over 70% of the total number filed. Onondaga County, in the wake of a declared policy of handling truancy with PINS petitions, is currently flooded with school-filed truancy petitions.

A final comment on intake's difficulty in keeping unnecessary cases out of court was offered by a number of the probation supervisors with whom we spoke. They suggested that the 120-day limit on intake/diversion may force inappropriate cases into court. Even if the case is progressing nicely but still needs supervision, there must be either a petition or a termination at the end of the 120 days. Since the outcome of that petition is most likely to be a disposition of probation supervision, it is not surprising that one probation supervisor commented: "How stupid. If the kid is coming along, what can supervision do that we can't." In counties where the intake adjustment caseload is lower than the supervision caseload, the comment is particularly understandable. Many of these probation people felt that an extension of that 120 days would help reduce the court's caseload. It should be noted that these are upstate comments. Probation units vary significantly in quality. A recent study of the Citizens Committee for Children in New York City raises serious questions about the adequacy of that city's probation supervision of juveniles.[22]

(22) "City Probation Services For Youth Called Inadequate By Civic Group," New York Times (Nov. 21, 1982) p. 1.

Another and more significant and more frequently suggested reform for family court comes from many probation staff as well as others who recognize the restrictions against which intake struggles. They argue that the most appropriate reform in the PINS area would be to limit the right of access by requiring that available community services be exhausted before the court would entertain a petition. While the thrust of this argument is sound, it is also clear that without the development of appropriate services within the community and without the establishment of clear responsibility for service provision, such reform would do little to assure that troubled adolescents and their families receive the help they need.

Disposition Shaped by the Family Court

The third assumption underlying the Family Court Act is that the court will be able to secure appropriate treatment for PINS through placement or community-based services. The court's ability in this area is restricted, however, both by the willingness of the child and parent to cooperate, as discussed earlier, and by the availability of appropriate services.

A recent Onondaga County study gives an excellent analysis of placement decisions and how they are molded by the lack of suitable services.(23) The study found that the PINS population needed intensive family counseling, crisis detoxification beds, emergency foster care, and special foster homes for troubled adolescents. Because those services did not exist in the Syracuse area, the community was unable to offer to PINS children the most normalized (i.e., family-like) and least restrictive environment, and instead, turned repeatedly to larger and more physically-restrictive institutions located outside the community. Similar circumstances in other counties may contribute to the high percentage of DSS PINS placed in institutional care.(24)

Clearly, not all potential PINS and their families need services; few need placement out of their homes. But for those who do, the necessary intensive family or community-based supervision and guidance may not exist. These children and families in crisis usually cannot be helped by weekly visits to probation workers who must manage caseloads of twenty or more youth. A serious truancy case, for example, may need significantly more than an admonition to return, but

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(23) Interagency Coordination Project: Alternatives for Youth At Risk, 1980 Placement Study of P.I.N.S. and J.D.'s in Onondaga County (April, 1982).

(24) See p. 18.

less than an institutional placement: the child may need to be taken to school each morning until the habit is re-established and may need after-school tutoring and homework assistance. Or the child may need a comprehensive educational evaluation and a carefully-monitored special education program. Or the mother may need reliable day care so that the child will not be asked to stay home with younger siblings. Sometimes an out-of-home placement may be called for; such a placement should be close enough to home so family ties can be restructured while the child learns new patterns of behavior.

Although the service needs of some children theoretically can be best met in a family foster care setting, the traditional foster care model does not provide the intensive casework supervision necessary to deal with seriously-troubled adolescents (or even young children). If an intensive foster care program is not available, the child will either be placed in a higher and unnecessarily restrictive level of care or will be given yet another opportunity to fail in a setting in which failure was predictable. Furthermore, the court cannot order the voluntary agencies, which provide care for well over 50% of DSS PINS, to accept a particular child. As a result, a disproportionate amount of time is spent searching for, and often not finding, an appropriate placement. The result: the child goes wherever he is accepted. As a youth worker in an urban county said: "PINS kids too often go into what's available rather than what's appropriate—in direct violation of the CWRA and the Institutional Schools Act." The court today is not authorized to order provision of specific school-related services or the development of new social services. No macter how clearly defined and obvious the need, the court's ability to prescribe treatment is limited to that which is already available.

The fact is that family court is neither a service funder nor a service provider. It can, therefore, add nothing to the existing array of community services, and thus the shape of supervision and treatment is molded by preexisting resources. What resources were there after the adjudication are the same as those that were there before adjudication: rarely does the family court accomplish delivery of services which could not have been secured voluntarily. Community services are local responsibilities and reflect local administrators' and legislators' perceptions of community needs. Only to the extent that the family court is able to influence those perceptions is it a generator of services. And only in that manner is the court truly able to order a disposition specifically tailored to the needs of the youth.

Are we then powerless to help these most needy and troubled of our children? It is the premise of this paper that we are not, and that the variety of programs and requirements for services instituted in the years between 1962 and the present offer a substantial—though still not total—mechanism for help. The next section will briefly examine those systems and their obligations for service.

III. SERVICE SYSTEMS FOR PINS

One commentator on status offenders pointed out that "there are virtually no status-offender-specific needs."(1) Because status offenders are little different from children who come to public attention in other ways (under different labels), the spectrum of need is very similar. In New York State, a number of systems have responsibility for meeting the entire range of service needs. Often we find PINS where these systems break down—where they fail to respond adequately, or where they, themselves, turn to the family court for assistance in solving their most difficult and frustrating service problems.

Most of these systems have an out-of-home care mechanism, a community-based service responsibility, and a needs assessment planning requirement. Many troubled adolescents can meet the placement or service requirements of a number of these systems simultaneously. Yet, each system operates with little formal connection with, or recognition of, the other—in some cases offering duplicative services and in others allowing service and placement needs to remain unaddressed, thus undermining the intent of legislation and policy.

Out-Of-Home Care

In New York State today, approximately 38,000 children are in care outside of their homes.(2) For the population with which this paper is concerned, there are

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(1) Arthur D. Little, "Responses to Angry Youth," Cost and Service Impacts of Deinstitutionalization of Status Offenders in Ten States, Washington, DC, (1977) pp. vi-x, 1,2,4,6,11,12.

(2) This figure is an approximation meant to respond to a layman's question on the number of children in care. Included in the count are: 32,000 children in the care and custody of local Commissioners of Social Services (the child welfare system), 3,000 children placed through school district Committees on the Handicapped, 2,500 children in DFY custody and in residential care, and 700 children in residential care administered through the Office of Mental Health. The 38,000 figure does not include children in care through the Office of Mental Retardation and Developmental Disabilities.

three "systems" which provide residential care for children—the education system, the mental health system, and the child welfare/foster care system.[3]

As previously mentioned, Committees on the Handicapped often have "jurisdiction" over those PINS whose misbehavior is symptomatic of educational handicaps. After having determined that the child's educational handicap requires residential placement,[4] the COHs may choose from a full range of placement options: state schools for deaf or blind children, private residential schools (usually for learning disabled or emotionally disturbed children), and voluntary child care agencies. Approximately 3,000 educationally handicapped children are currently in placement through this mechanism.[5] However, many disturbed, learning disabled, and other "handicapped" PINS are never referred to, or identified, by COHs. A fuller use of this mechanism could reduce the need for turning to the family court to obtain necessary services or placement.

The Mental Hygiene Law provides temporary emergency, voluntary, and involuntary placement for children in need of psychiatric care. Currently, there are approximately 700[6] children in residential psychiatric facilities. But not all children with psychiatric problems enter the mental health system. Many enter into the foster care system through the juvenile justice route and are placed with DFY or DSS. In many of these cases, residential care is called for but the treatment needed is not available through the juvenile justice system; for these youth, a level of security is substituted for intensity of services. In some of the cases in which the out-of-home placement results from behavior arising out of unaddressed emotional problems, the placement might have been avoided were there good community-based mental health services. Recent legislation to establish Residential Treatment Facilities[7] was developed in response to the recognition that there was a need

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(3) This enumeration excludes the Division for Youth. Although somewhere between 250 and 300 PINS are in the cusdoty of the Division at any given time, DFY is not a system with primary residential placement responsibility for PINS. PINS who are in the custody of DFY are generally those for whom the social service system could not find an appropriate setting.

(4) These procedures are defined in Article 89 of the Education Law (Children With Handicapping Conditions) and its implementing regulations, 8 NYCRR Part 200.

(5) New York State Education Department, Annual Statistical Report (1981).

(6) Office of Mental Health's new 1982 periodic report on children in care.

(7) Chapter 947 of the Laws of 1981.

for an intermediate level of care between that offered by the psychiatric hospitals and the voluntary child care agencies.

The third and most extensive system, child welfare, is responsible for the largest group of children. Children enter foster care in one of three ways: through voluntary placement, PINS (or JD) proceedings, or neglect/abuse procedures. In fact, it is axiomatic in family court that the same juvenile behavior and family problems (neglect, family crisis, poverty) can result in foster care placement through any, or each, of these three.(8)

Adolescents are the largest growing group in the foster care population. According to the State Department of Social Services' Consolidated Services Plan 1982-84, 44% of the foster care population is 14-17 years old.(9) At a recent Assembly hearing on foster care (April, 1982), Commissioner Krauskopf of the New York City Human Resources Administration testifed that 40% of the new admissions to foster care in New York City were 14-17 and had previously come to the attention of the family court. In Suffolk County, too, in 1980, 46% of those children admitted to care and in care one year later were 14- to 17-year olds, many of whom had been placed for behavior problems.(10)

Whatever the mechanism through which adolescents enter care, they enter into the child welfare system.* So when community-based programs and treatment are inadequate to the need—leading to the use of adjudication, and often institutional foster care, in lieu of services—the impact is felt in the foster care system and at least part of the solution must be sought from that system.

DSS Preventive Services and the Child Welfare Reform Act - Recognizing that New York has far too many children in foster care, that removal from families was severely damaging to children, and that many youth could be maintained with their families if appropriate services were provided, the State Legislature in 1979 enacted the Child Welfare Reform Act (CWRA). This Act is important to PINS and potential PINS youth (those with behavior problems or family problems) in several

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(8) MacWillie, Persons In Need of Supervision: A Policy Review and Recommendations, p. 10; The Temporary State Commission to Recodify the Family Court Act, Proposal for Voluntary Foster Care Placement and Review Proceedings (undated).

(9) State Department of Social Services (SDSS), Consolidated Services Plan, 1982-84, p. 51.

(10) Suffolk County Department of Social Services, Consolidated Services Plan, 1981-84, p. 33.

* Even though the placement is made under court order, there can still be a charge to the family. Placements made through the COH, however, can never be charged to the family. See Appendix A: Placement Costs

ways. First, it requires DSS to provide preventive services to families with children at risk of foster care, if it is thought that such intervention can help keep the child in the home. These cases are defined as "mandated," that is they are cases for which preventive services must be provided. Second, the CWRA establishes an enriched reimbursement formula to counties for costs of provision of preventive services to mandated cases.(11) And third, the Act imposes fiscal sanctions against counties which make inappropriate or unnecessary foster care placements.

The CWRA also requires that the local DSS develop a specific plan with defined goals and objectives (set out in a comprehensive Uniform Case Record) for all mandated preventive service cases and all foster children placed with DSS. Adjudicated PINS or those at risk of PINS adjudication are implicitly included among the "Circumstances" which call for mandated preventive services:

> *(1) Child Service Needs:*
>
> *(i) Circumstance: The Child*(12) *has special need for supervision or services which cannot be adequately met by the child's parents or caretakers without the aid of intensive services and this results in the child being at risk of foster care placement without such services. This need for services is the result of one of the following:*
>
> *(a) the child has a diagnosed or diagnosable physical, mental or emotional condition which severely impairs the child's ability to carry out daily, age appropriate activities, or*
>
> *(b) the child's behavior, although not dangerous, results in severe management problems in the home, the school or the community, or*
>
> *(c) the child's behavior presents a serious danger to other people or to the child himself.*(13)
> (Emphasis added.)

The dearth of services for the PINS population makes advocates and youth workers eager to tap the funding and service potential of the CWRA. But while probation is responsible for screening incoming PINS cases, it is DSS which has

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(11) Reimbursement rate for mandated services is 75% of cost. State funds for reimbursement are uncapped.

(12) Child is defined as a person up to the age of 18.

(13) 18 NYCRR §430.9(c)(5). This is a portion of the Utilization Review Regulations—standards set to measure local DSS performance. Lack of compliance with these standards is sanctionable.

the legal responsibility for the determination of whether or not a case is mandated (can be paid for under CWRA). Counties must, therefore, develop a process for the integration of these two responsibilities, perhaps through placing a DSS staff member in probation intake or through development of interagency agreements which define mutual and complementary roles of DSS and probation in the use of the CWRA.(14)

Despite the legislation and excellent interagency coordination in a few counties, SYA's survey of probation departments found that, in general, neither probation nor DSS child care workers recognize that DSS has an affirmative obligation for provision of services to children at risk of family court involvement. The Council on Children and Families' Interagency Coordination Project is addressing this along with other interagency service problems affecting adolescents at risk. The Project, working with DFY, State DSS, and Probation, is providing selected counties with special assistance in planning and coordination:(15) its experience has encouraged new draft regulations which would allow public agencies other than DSS (such as probation) to receive CWRA monies.

An important issue must still be resolved before the Child Welfare Reform Act can become a mechanism through which all youth at risk of placement as PINS will be able to receive preventive services. Although the CWRA does offer counties an enriched reimbursement for provision of preventive services, they still cost. And the fiscal constraint against increased county expenditures is a powerful curb on service provision. On the other hand, counties are now concerned that unnecessary (avoidable) use of foster care will make them liable for sanction under the new Utilization Review. However, the CWRA exempts from sanction unnecessary or inappropriate foster care in cases placed by the court as PINS or JDs(16) (as opposed to voluntary placement or protective procedures). This is of concern to

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(14) Monroe and Suffolk Counties are currently exploring this mechanism.

(15) The Interagency Coordination Project: Alternatives For Youth At Risk, of the NYS Council on Children and Families, received requests for participation from 32 counties. Eight (Clinton, Orleans, Oneida, Herkimer, Tompkins, Onondaga, Westchester, Erie) were finally chosen for intensive technical assistance.

(16) 18 NYCRR 430.10(d)(2); 430.11(e); 430.12(h). In response to repeated requests by local districts for clarification of this specific interpretation, DSS Commissioner Blum sent a letter, dated March 10, 1982, to all districts wherein she states: "...no Utilization Review sanctions may be taken on PINS or JD cases."

advocates and State DSS alike, since the exclusion enables local DSSs to avoid both the service mandate and the placement accountability.

Also contributing to the DSS reluctance to become involved in PINS is the child welfare system's traditional emphasis on serving younger children. A lack of training and the resulting absence of skills in resolving the social problems of families with troubled adolescents often makes caseworkers personally hesitant to become involved in PINS cases, especially when their department can be held fiscally accountable for inadequate preventive services. Few local departments have special units for adolescents. Those services aimed at the troubled adolescent and his family—crisis intervention, family counseling, and mediation—have generally been the trade of juvenile justice professionals.

Thus, despite the applicability of CWRA provisions to PINS, the child welfare system still encourages a shift of responsibility for adolescents to the courts. Probation staff responding to SYA's survey reported a continuing, and even growing, DSS tendency to refer cases of older adolescents with behavior and family problems. And yet, the rising percentages of adolescents in the foster care population should serve as a clear warning of the fiscal peril of failing to offer timely preventive services.

Thoughtful and comprehensive planning at the local level can, and has begun to, alert counties to these issues. Each local DSS must prepare and submit to the state a triennial Consolidated Services Plan, as well as annual updates and implementation reports. The Plan must set forth:

> *...the child welfare service needs of children and families for whom the social service district is or may be responsible; historic programs and fiscal trends...in the level of care... and a description of the resources known to be available or likely to become available to meet those needs.*(17)

In those counties which do have a significant number of adolescents in foster care, a carefully drawn Plan will inevitably identify PINS-type youth as a category to be served, as well as document the scarcity of service programs for these youth.

DFY Local Assistance and PINS - Another participant in the development and funding of service programs for youth is the Division for Youth. State funds for

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(17) SDSS Comprehensive Services Plan, 1982-84, p. i.

community-based youth service agencies and projects are distributed through DFY's local assistance arm and are administered by city and county youth bureaus. DFY has recognized the importance of a community-wide approach to planning for the variety of youth service needs, and requires that each county develop a Comprehensive Youth Services Plan[18] to serve as a guide in the allocation of local assistance funds.

These funds can be used to develop adolescent- and family-focused services. Because CWRA funds are tied to an imminent-risk-of-placement criterion, they cannot be used to fund primary preventive services. DFY monies can, however, be used for those purposes and complement DSS monies in developing a range of services.

In Monroe County, for example, the youth bureau is using the planning process and their influence and funds to develop programs for PINS youngsters and their families.[19] The extent to which youth bureau leadership can spark cross-agency planning is demonstrated by its progress. There, the objective was to decrease the number of youth processed and placed by the family court as PINS. The result of cooperative planning, coordinated by the youth bureaus, has been the establishment of a number of diversion programs which offer intensive (frequent contact over a significant time period) and multifaceted (including, as necessary, counseling to youth and family, school advocacy, employment counseling, etc.) services, all delivered without the involvement of the court. The Rochester-Monroe County Youth Bureau has also encouraged the development of specific interagency service agreements.

The local assistance arm of DFY also administers programs funded under the Runaway and Homeless Youth Act (RHYA).[20] RHYA programs are empowered to provide emergency shelter for up to 60 days, crisis intervention, and family reconciliation services to runaways and homeless youth up to age 18, and are required to:

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(18) Executive Law §420.

(19) Coordinated P.I.N.S. Diversion Project Summary, Rochester-Monroe County Youth Bureau (no date).

(20) Executive Law §532 et seq.

> *...develop jointly with the department of social services in consultation with county youth bureaus...regulations concerning the coordination and integration of services available for runaway and homeless youth.*(21)

Interagency coordination is critical to the effectiveness of runaway programs: since runaway programs are crisis-oriented, programs must rely on other youth service providers for delivery of whatever long-term assistance may be required for a particular youth.

Runaway programs also offer an important alternative to PINS petitioning, since they are among the most effective programs available for dealing with families in conflict. (Nationally, runaway programs return youth to their families in 50% of cases.)(22) Certainly, they directly confront, and attempt to resolve, many issues of family conflict which the more divisive procedures of family court can only exacerbate. At times of family crisis, the shelters can also be used as emergency housing and an alternative to detention.

However, because the federal and state allocations have been so limited, by 1980 only ten counties had been approved for RHYA funding.(23) While it was estimated that there were 63,000 runaway and homeless youth in New York State in 1975, 43,000 of whom originated within the state, only 7,500 youth were served during 1979 and 1980 (excluding Covenant House in New York City which served another 7,360 youth in 1980 alone).(24) Other funding sources which counties can explore to fill this need are the Child Welfare Reform Act and emergency shelter funds available through the Federal Emergency Assistance to Families Act.(25) (This latter source is currently used in New York City.)

OMH Mental Health Service and PINS - PINS jurisdiction has served to plug the gaps in the mental health system's provision of residential and community services. The following are some examples of this misuse of PINS jurisdiction:

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(21) Executive Law §532-d(4).

(22) Quoted in Alternatives, No. 359, a publication of DFY and the Town of North Hempstead Youth Bureau (Aug. 26, 1982) p. 9.

(23) Legislative Commission on Expenditure Review Delinquency Prevention and Youth Development Programs, Program Audit (LCER) (May, 1980) p. 8.

(24) LCER, p. 3.

(25) "Non-Secure Detention in New York State," New York State Council on Children and Families (September, 1981).

1. PINS petitions in some counties are filed because the coercive power of the court under §251 of the Family Court Act is one relatively simple way to secure psychiatric evaluations[26] and/or emergency beds for seriously disturbed children. This happens in some counties where the mental health system resists voluntary admissions to psychiatric facilities for evaluation or where bed space is scarce.

2. PINS petitioning is encouraged as a means by which parents may secure the authority of law enforcement agencies—police or probation (as opposed to the support of mental health professionals)—in dealing with disturbed adolescents. In need of assistance in coping with mentally ill children, many parents (mostly low-income) turn to family court, which action leads almost inevitably to the child's adjudication and often placement as a PINS. Were mental health services both publicized and readily available, parents and family court personnel would be more likely to look there for help.

3. In some counties, lack of intensive community-based services providing an intermediate level of care for disturbed children and their families results in a placement which, in effect, substitutes a certain level of security for intensity of treatment.[27]

The mental health system appears almost frozen in the traditional dichotomy of institutional care and individual psychiatrically-oriented counseling.[28]

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(26) SYA's Incarcerating Children: A Study of the New York State Secure Detention System (1981) pointed out that sometimes remand to secure detention is used as a means of securing psychiatric evaluations. This may happen in counties where the detention center contracts for mental health evaluations.

(27) The absence of a range of supportive services often precludes the use of family foster care. In response to this problem, Genesee County developed a Cluster Home Program which serves, among others, emotionally disturbed status offenders. A "cluster" consists of four homes with specially trained house parents. Each cluster has a director, five child care workers, and a full-time educational consultant who works as a liaison with the schools. A child care worker is assigned to each home and works during the hours when school is not in session. Mental health services are provided by the local clinic. Certain portions of the program are funded at the 75% reimbursement rate available for mandated preventive service cases.

Information on the program was provided to SYA in a telephone conversation with Dale Crandall, the Commissioner of Social Services in Genesee County.

(28) See, Dr. Jane Knitzer, Unclaimed Children, Children's Defense Fund (1982) passim.

Probation and family court judges consistently say that youth in serious need of mental health services end up in the PINS system and that PINS children often have need for an intermediate level of mental health services—such as day treatment, family support services, or community residences—for which few models exist in this state.(29)

Nevertheless, there is a required community health service-needs planning process which should be more aggressively used to identify and develop requisite programs. The enabling statute for mental hygiene local assistance programs requires county governments to develop, in cooperation with community agencies, unified service plans to meet in-community needs for:

> *...preventive, rehabilitative, and treatment services [and] to improve programs for the mentally ill, mentally retarded, developmentally disabled and those suffering from the disease of alcoholism and substance abuse.*(30)

Mental health local assistance funds may be used for a comprehensive range of services, including in- and out-patient services, community research, and information and referral.

Despite this broad mandate, the mental health planning process lags far behind that of youth bureaus and social service systems. Little has been done to develop this continuum of nonresidential care for those adolescents whose needs, while intensive and serious, can still be met within the community. It is, therefore, vital that representatives of the mental hygiene system participate actively in the process of planning for services,(31) not just for the mental health system but also in DSS and youth bureau planning. Equally important is a method of assuring a minimally adequate response on both a community-wide and case-by-case basis. The total inadequacy of the system's mental health services for this population stresses the importance of an accountability mechanism. Perhaps there ought to be legislation creating fiscal sanctions or administrative appeal policies for failure to meet planning criteria and to provide appropriate services.

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(29) See New York Times editorial "Mental Health is Not a Jobs Program" (12/1/82): "Each year New York State spends in excess of $700 million on...mental hospitals...," yet only $180 million on community mental health programs.

(30) Mental Hygiene Law Article 41 "Local and Unified Services."

(31) But note that in one county, mental health officials declined to participate in the youth bureau's comprehensive planning process, stating that it might involve them in a "conflict of interest."

Even with those, the pressure necessary to generate community-based, intensive, intermediate care programs will not build until PINS jurisdiction is no longer available to respond to the problems and thus to mask the shortcomings of the mental health system.

Schools, Truancy and PINS - Truancy is the most common allegation in PINS petitions[32] and is found in petitions filed by parents as well as those filed by schools. However under current laws, few limits are placed on a district's discretion in the use of PINS and the result is extensive misuse of family court by some districts. Despite the belief that PINS jurisdiction in truancy cases is defined by some commonly-accepted standard, nowhere in the law is truancy defined. The Family Court Act (§712) allows petitioning of any child "who does not attend school in accord with Part One of Article Sixty-Four of the Education Law." The Education Law (§3205(1)(a) and §[illegible])(a)) requires only that a minor of compulsory age attend "regularly."

In the SYA survey, probation officers stated that school districts' responses to truants vary from district to district, even from school to school. Some school officials make full use of available resources; others turn immediately to the court. Some school districts have been known to file petitions after only a few days' absence, while others may ignore absences of even 100 days. School policies for PINS petitioning are capricious. For example, because of a dearth of attendance teachers, few petitions are filed by schools in New York City. In Monroe County, however, truancy petitions accounted for 70% of filed petitions in 1980. But when the Rochester City School District lost all but one of its attendance teachers, the District stopped filing PINS petitions. In Onondaga County, on the other hand, the Syracuse School District responded to the loss of its attendance teachers by instituting a policy of filing petitions on "all youth defined as truants under the New York State Family Court Act and the New York State Education Law."[33]

Despite such heavy reliance on petitions, court processing of truants appears ineffective. In Monroe County, for example, 75% of truants seen in 1978 received

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(32) Vera found this allegation in 58% of the study cases.

(33) Interagency Coordination Project, pp. 53-56.

"at most, a court reprimand and a questionable resolution of the truancy pattern and its underlying cause, while 25% received placement or probation."(34)

Research for SYA's Failing Students - Failing Schools: A Study of Dropouts and Discipline in New York State indicated that, by and large, schools turned first to parents for assistance in combating truancy. That approach was almost always accompanied by punishment (suspension) for truancy, the use of which was justified as necessary to secure parental involvement. When both suspension and outreach to the parent had failed, schools turned to the court. However, because truancy is often a symptom of family problems, the school which does not look beyond the parent for help before turning to the court will be left with little recourse but the court. The other major cause of truancy—academic failure—is also a problem which few parents of troubled adolescents are likely to be able to solve single-handedly. Sometimes academic failure results from poor basic skills. Other times, it is the result of an unaddressed handicapping condition. Whatever the cause, if an adolescent cannot perform and therefore refuses to attend school, experience shows that no amount of parental or court authority will compel attendance unless the underlying problems are recognized and attacked.

Schools do have both the means and the obligation to help children who need either special educational programs or remediation. A comprehensive body of state and federal laws and regulations define and protect the educational rights of handicapped children. Part 200 of the Regulations of the Commissioner of Education outlines the procedures by which appropriate educational services for a child with a suspected handicapping condition is to be developed. Poor academic performances are also addressed in compensatory and remedial programs, special funds for which come from both Chapter I of the federal Elementary and Secondary Education Act and New York State's Pupils With Special Education Needs legislation. Some districts also offer alternative programs (such as BOCES and magnet schools) designed to serve students who simply do not fit well into traditional academic programs.

Districts vary considerably in their use of all these programs, and very few coordinate their use with school truancy policies and procedures. There is no legal requirement that an appeal to the authority of the court be preceded by

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(34) Testimony by Lois Davis, of Church Women United, before the Temporary State Commission to Recodify the Family Court Act (October, 1982).

demonstrated exhaustion of all appropriate school and community resources. New York was not alone in its lack of an exhaustion requirement. In response to the same problem, the State of Illinois amended its school code in 1977 to require that truancy petitions include: "...the nature of the supportive services, alternative programs and other school resources that school districts provided to that child in an effort to correct that child's truant behavior."(35) An additional statute prohibits punitive action against habitual truants unless such services have been provided. The courts' strict interpretation of this statute has greatly limited the use of truancy petitions in Illinois. In New York, however, PINS petitions still give schools the means to free themselves from the obligation to evaluate, and often educate, PINS youth. (Placed PINS seldom attend school in their home district.

In New York State until 1981, schools could respond to truant handicapped children in one of two ways: through the education of the handicapped procedures or through PINS. PINS procedures were not only faster and easier, they were considerably cheaper, since schools had no financial responsibility in PINS cases. The Institutional Schools Act (Chapter 563)(36) contains provisions which should partially correct the financial imbalance in these two placement mechanisms. Designed primarily to assure that children placed in voluntary child care agencies receive an appropriate education and also to influence district approaches to PINS youth, Chapter 563 requires youth to be evaluated by their home district prior to placement. If they are found to be handicapped, the school district must contribute to the cost of their education. Thus, the law reduces the fiscal advantage in the use of PINS over Committee on the Handicapped procedures.

However, the Act is new, not yet fully implemented, and . . .old habits die hard. Moreover, it does not prevent unnecessary PINS petitioning of handicapped children; it simply corrects a fiscal incentive. Thus, access to family court must be sharply limited if active efforts at truancy prevention are to be generated within school districts.

Truancy prevention programs with family outreach, counseling, and academic and vocational components can be developed and paid for through the use of a combination of funding streams. For example, some towns have had successful

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(35) Ill Rev Stat 1978, Ch. 122 Section 26-8(a).

(36) Chapter 563 of the Laws of 1980, effective July 1, 1981.

experiences placing community-based agency staff (usually DFY-funded) in schools; there the youth workers can help to identify and solve whatever school-based problems might be contributing to the truancy. Cooperative planning efforts are key to creating the kinds of programs that help make schools work for troubled adolescents.

Probation - No survey of service systems would be complete without discussion of the role of the county probation departments. Not only does probation play a critical role in determining the outcome of a petition, probation officers often deliver whatever services are received. Their services can be divided into three phases: the first is intake, where efforts to adjust or divert take place; the second occurs during the court process, when an investigation—essentially the development of social history—is done; and the third occurs after adjudication, when there has been a disposition of probation supervision.

The size and program structure of different probation departments, and thus the quality of their service provision, varies significantly from county to county. In a small county, for instance, the same probation officer may continue with a case through its differing phases. In some counties, great emphasis is placed on intake's diversion function and caseloads are lower there than they are for supervision. In other counties, there is little outreach during intake—which is seen as appropriate only for those cases which can be usefully dealt with in a few meetings at the probation office. Some counties offer intensive probation supervision, usually thought of as the last chance to avoid placement: caseloads are small and workers are expected to spend most of their time out of the office with youths and their families in schools and perhaps in assisting the young people to find jobs. In general, probation officers may act as case managers (including making referrals to community services), counselors, and mediators, among other things.

State reimbursement to county probation departments is based on the lowest state reimbursement formula. The combination of an under-50% match and the exclusion of such basic costs as fringe benefits and space rental yields an actual reimbursement of something between 21% and 33% of county outlay.(37) Thus, probation services are a particularly heavy expense to counties and often are the first

(37) A Proposal For Restructuring State Aid and Funding New Probation Initiatives, 1983, State Division of Probation (September, 1982).

to suffer when money is tight. Moreover, intensive supervision programs which provide an alternative to placement are funded at the probation reimbursement rate, while social services programs designed to prevent placement are reimbursed at 75% of cost. The state is currently exploring the possibility of making probation services delivered to mandated clients, i.e., those at imminent risk of out-of-home placement, eligible for 75% reimbursement through the Child Welfare Reform Act.

A number of systems bear the responsibility for responding to the range of adolescent problems. Were those systems to fully meet their obligations, there would be little need for court intervention. This paper will conclude with detailed recommendations for procedural and jurisdictional changes designed to assure provision of requisite services. However, since neither the present system nor a reformed one can work without the availability of certain basic services, the next section will briefly outline those programs essential to helping troubled adolescents and their families.

IV. SERVICE MODELS

In the preceding sections of this paper, PINS were described as troubled adolescents whose families have often given up on them and who have been inadequately served by those public institutions responsible for providing help. In most of the petitioned cases which proceed to adjudication there is need for some intervention: this might be simple advocacy to secure an improved educational program or more fundamental intervention in the form of specialized foster care. As is obvious, the current service systems reach and serve the "easy" cases best, but their response to difficult cases—the resistant child or family or those with multi-service needs—is sporadic, uncoordinated, and usually inadequate. In looking at the service needs of PINS, one must distinguish "gaps" in services from "voids" in services. The first may simply mean existing programs which are inaccessible because of restrictive eligibility, pre-labeling requirements, inadequate transportation, or simply the complications of yet another intake process, etc.; the second indicates a total lack of necessary programs or programs inadequate to meet the need.

A well-coordinated interagency planning process can go far to uncover and correct the first kind of service barrier. The second can be addressed through the "tapping" of new service funding streams, the coordination of these with the usual methods of funding, and then the creation of new service models.

Any system to keep children out of court and in their own home setting must contain the following elements:

1. Central intake for adolescent and family problems, with 24-hour crisis counseling capable of addressing the immediate problems, identifying the existence of deeply rooted ones, and of making referrals for the appropriate level of intervention;
2. Immediate and short-term shelter care;
3. Intensive and immediate hands-on counseling and outreach to the family;
4. Mediation through a dispute resolution center or as a component of other service programs.

Central Intake

Whether housed in probation, DSS, or a private agency, a single intake unit for adolescents and families in crisis can go a long way toward reducing confusion and coordinating service efforts. The central intake unit must be staffed with persons experienced in counseling adolescents and families in crisis. In addition to offering an immediate response to family crisis, counseling should focus on the whole family rather than just the juvenile and should work to facilitate communication among all family members. Clearly defined procedures for referral to the existing community programs are essential to the effectiveness of intake. In addition, intake's procedures must allow the initial worker to stay with the case until it is both referred out and assigned to a specific worker.

Because it is important to determine at the outset whether a case meets the criteria of a mandated preventive service case, a formal arrangment with the department of social services should establish a procedure for making that determination during intake. If intake is housed in an agency with a standard nine-to-five working day, on weekends its staff can work out of an emergency shelter or community agency thus assuring the capacity for 24-hour response.

Emergency Shelter

Emergency shelter can be used both for runaways and for youth in crisis, especially when family conflict is so severe as to require alternative housing. The best models for adolescent and emergency shelters are funded by the state and federal Runaway and Homeless Youth Act (see pp. 6-7).

The current lack of emergency shelter beds has resulted in a misuse of the nonsecure detention system. This was the finding of the New York State Council on Children and Families, which recommended that use of nonsecure detention for PINS be discontinued and short-term emergency shelter be used instead,(1) unless detention is specifically required on the grounds that the child is likely to fail to appear in court.

In large urban areas, emergency shelter needs may require a special building and staff. In other areas where a community already has a 24-hour on-call intervention and counseling capacity, the shelter need may be satisfied by a network of

(1) "Non-Secure Detention in New York State," New York State Council on Children and Families (Sept. 1981) p. 16.

specialized foster families who have been trained to work with children and families in crisis.

Intensive Home and Community-Based Intervention

Troubled adolescents and their families often present a complex set of problems which have proven resistant to the formal counseling approach available in many communities. The families whom the courts continue to fail need an intensive level of supportive services to help them function effectively. The goal of such intervention is the modification of deep-seated family and child interaction and behavior patterns. Unless these intensive services are provided, placement is often the only alternative—a temporary solution at best.

Specially trained youth workers, sometimes working in teams (not all of whom need be professionals): "provide services to families in their own homes, including crisis intervention, counseling, training in problem-solving skills, homemaking assistance and financial planning." Workers also help families to make full use of all community resources.(2) Since school problems are often central in PINS cases, programs may have a special education advocate who provides that help in all instances where it is needed, or the family's specific worker may act as the education advocate.

While full services to a case usually last no longer than six months, follow-up contacts may continue for a longer period. Several service models have brought about significant change in highly disturbed family units, but all of them are characterized by the capacity for a 24-hour response to a crisis and by frequent, if not daily, contact—usually done in the home.

New York State, however, has few such home-based service programs, in spite of the fact that these offer a real alternative to placement. One successful program was forced to close when funds dried up.(3) Intensive probation supervision

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(2) Margaret L. Woods, Alternatives to Imprisoning Young Offenders: Noteworthy Programs, National Council on Crime and Delinquency (1982) p.5.

(3) Home-based family counseling, various forms of educational assistance (e.g., tutoring, representation before COHs and vocational guidance), and links with a range of community services were all key to the success of that program. It served adjudicated JDs and PINS, usually repeat offenders, for whom this program was the last chance before placement. Figures for one year show that only 10 out of the 60 children served were placed. Because the services offered through this program cut across county departmental lines, no one single department fought hard enough to keep it alive. Had it not been for DFY's SDPP and YDPP support, the doors would have closed sooner. Unfortunately, DFY funds alone are not sufficient to underwrite both the range and service integration of the full program. Clearly, traditional and outmoded divisions of responsibility die hard.

and PINS (or JD) counseling teams, however, do exist in some areas and offer the close contact and service coordination which is needed, thus creating an alternative to placement. Community- and home-based services are expensive in the short run, but they are an investment which pays off in the prevention of a series of placements in multiproblem families, thus effecting significant long-term savings.

Juvenile Mediation Programs

Not all PINS and their families require long-term intensive services. Some simply need help in solving specific intra-family disputes and can benefit from the mediation model of conflict resolution which has proven to be so effective in reducing the need for court intervention.

Mediation or arbitration programs allow all the parties in a situation to come together with a trained aribtrator or mediator to work out specific step-by-step solutions. The process is voluntary, relatively quick, and inexpensive. Studies also show that mediation and arbitration programs can result in substantially lower recividism rates than does traditional court processing, probably because all parties have worked together to develop a plan that is acceptable to them all.

Currently, there are at least two large and successful mediation programs (in Rochester and New York City) in New York State; both rely on trained volunteers who act as mediators and both accept referrals from family court intake. (In less populous counties, mediation can be offered by a few specially trained workers from either central intake or a community-based program.)

Regardless of whether PINS jurisdiction continues as it is currently constituted or is modified or restructured, these four components are essential to any system designed to serve troubled children within their own communities and without undue reliance on court intervention. In the next section, a brief summary of our findings will precede SYA's recommendations for reform.

V. RECOMMENDATIONS

Overview

Considerable analysis and review of the existing system has made it increasingly apparent that the present PINS system is not an effective and efficient process for ensuring appropriate services to children and families in need. Nor does it appear that, in most cases, the coercive power of the court is either necessary or helpful in resolving those problems.

In our research, we have found that:

1. Most PINS petitions do not survive to adjudication, and therefore unnecessarily consume court resources.

2. Truancy petitions are being inappropriately used; many districts frequently file petitions before they have exhausted, or even used, their own or the community's resources.

3. There is little cross-agency planning for a range of services for troubled adolescents and families. This leads to voids in services, duplication of effort, and an isolated and serial application of individual service programs—when one intensive, multi-service program is needed.

4. Most children and families who secure services through the PINS process could have received those services through a voluntary system.

5. Most children placed by the family court could have been placed voluntarily, if a voluntary placement system were more responsive to adolescents.

6. Several factors, including the fear of sanctions under the CWRA, are contributing to an increasingly restrictive use of voluntary placements and thus to an increasing use of the courts as the placement agency for PINS.

7. While many PINS cases are clearly mandated preventive service cases under the definition of the Child Welfare Reform Act and eligible for appropriate preventive services, only a handful of counties have developed the formal agreements which are necessary to assure that children seen by probation receive those services, and that the counties receive the enriched reimbursement for providing those services.

The current system focuses narrowly and short-sightedly on young people, usually for problems which are as much related to their families' behavior as to their own. It overloads the courts, promising services and resolutions it cannot deliver—and ultimately frustrates the seekers of help, the service agencies, the court personnel, and the judges.

The recommendations for change proposed by SYA would shift the system's emphasis away from its current primary concern with the adjudication process and towards an increased focus on the provision of necessary services. Specifically, the recommendations restructure the present system of serving and adjudicating adolescents who are ungovernable and incorrigible. Court jurisdiction over truants remains, but is modified by a limited definition of truancy and a clarification of the school's responsibility with regard to truants. The family court is established as the final arbiter in parent/child conflicts regarding living arrangements. The recommendations seek to assure that local departments of social services meet their currently-existing responsibilities for services to adolescents at risk of placement and, therefore, redefine the court's role to include a review of DSS action or inaction. In addition, a series of recommendations strengthen the provision and funding of services by requiring planning and cross-agency coordination of services to troubled adolescents and their families.

As this summary suggests, SYA's recommendations for reform fall into two categories: the first redefines the role of the court, and the second structures planning and coordination in service delivery. This latter category of planning and service recommendations could be instituted without jurisdictional changes in PINS. Some of these could be accomplished administratively and, in fact, are now underway in selected counties, particularly those in which the Interagency Coordination Project of the Council on Children and Families is active. Implementation of other recommendations regarding planning and service would require minor legislative clarifications.

We are convinced, however, that unless and until there is a fundamental reshaping of the role of the court, even full implementation of the planning and service requirements will not end the current overuse of PINS jurisdiction. The courts will continue to be overloaded with many cases which can, and should be, handled through provision of services on a noncoercive, voluntary basis.

In short, we believe, with Judge Bazelon, that because PINS jurisdiction exists, it is used and other more acceptable methods are not. Twenty years of that jurisdiction have created an attitude and a practice which do more to perpetuate themselves than do either the legal or the practical necessities.

RECOMMENDATIONS TO REDEFINE THE ROLE OF FAMILY COURT

Briefly, the following recommendations call for:

- Removal of ungovernability as grounds for court jurisdiction and establishment of a court review process to monitor the provision of services or placement by the Department of Social Services;
- Retention, but limitation, of court jurisdiction over truants; and
- Establishment of a petition process for court-sanctioned alternative living arrangements, empowering the court to approve an alternative residence or, if minimal standards of health and safety are not met, to place a child in a foster care setting acceptable to the child, or to return the child to the family home.

Recommendation I

Family court jurisdiction over ungovernable and incorrigible minors shall be ended and a new dependency procedure(1) *to assure service provision shall be added. These youth and their families shall be referred to a central intake unit for noncoercive services and/or placement. (See Recommendation VII.)*

A court review procedure shall be established to provide parents and children an opportunity to challenge social services departments' denials of such services or placements. The court shall be empowered to order the appropriate agency to provide adequate and sufficient services or placement where denials of such are found by the court to be out of compliance with the provisions, and intent of the Child Welfare Reform Act. Law guardians shall be required to represent youth, and indigent parents shall also be afforded representation.

Comment

The reasons for removing ungovernability as grounds for a PINS adjudication fall into three categories:

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(1) This terminology is used to ensure that the proceeding will be within the Family Court's grant of jurisdiction under Article IV §13 of the New York State Constitution.

1. Family court does not provide the help which is basic to the resolution of most adolescent crises—family services. While the court may call for services, it cannot generate services which do not already exist in the community. Nor can it always assure delivery of even those which do exist. The low rate of service referrals and follow-up and the frequency of repeat PINS are indicators of the court's failure to provide services; the need for such intervention is evidenced by, among other things, the rapid rate of increase in the adolescent foster care population.

2. Not only does the court fail to assure that alleged PINS and their families receive services, but the court process itself frequently exacerbates the family situation which brought parent and child to court. The adversarial nature of the court process accentuates family differences and makes it more, not less, difficult to solve intra-family problems.

3. The retention of PINS jurisdiction presents a serious threat to the fulfillment of the Child Welfare Reform Act's promise to assure an increase in preventive services. Article 7 (PINS and JD) placements free DSS caseworkers from the planning responsibilities involved in the preparation of the Uniform Case Record. In addition, since fiscal sanctions do not apply in Article 7 placements, they also shelter local departments of social services from responsibility and accountability under Utilization Review.

It is also important to note that the elimination of PINS ungovernable jurisdiction would not leave the state powerless to intervene in cases of serious adolescent problems. Under other statutes, there is, and would remain, considerable coercive authority to detain or place endangered children. These are:

- child protective laws and procedures;
- mental hygiene commitment statutes; and
- juvenile delinquency jurisdiction.

Furthermore, the resources of federal and state runaway programs can assist with the immediate shelter and service needs of runaway youth.

PINS procedures are often used by families in the absence of other agency action, notably DSS.[1)] The drawback to PINS jurisdiction is that the court looks only at the actions of the child and not at the appropriateness of the agency response. The state regulations and monitoring mechanisms of Utilization Review and Child Care Review Service do not, and could not, easily identify those cases discouraged from seeking services or placement. Nor can a state system monitor the adequacy of a given service for a specific case. And yet, it seems clear that if DSS is not held locally accountable for the placement-service decision, the mandate of the Child Welfare Reform Act will be seriously undercut.

The new review section establishes the court's authority to order service delivery in certain instances. When central intake has referred a case to DSS or a request has been made for services, DSS would be required to respond, in writing, within 30 days. Any parent or minor requesting services or placement would have standing to petition the court for a review of a DSS determination that voluntary placement is unnecessary or inappropriate or that services need not be provided (i.e., that a case is not mandated) or that services are not adequate. Notification of this right to petition, and of the right to be represented by counsel at the hearing on the petition, along with a list of organizations providing free or low-cost legal services, would be included with the written determination that services or placement will not be provided.

After the filing of the petition and pending the hearing, the court would have the power to order interim services.

At the hearing, upon a petition for services or placement, the court should appoint counsel for the minor and could:

1. Mandate preventive services upon a finding that without such services the juvenile will be placed in foster care;
2. Order DSS to take a voluntary placement; or
3. Dismiss the petition upon a finding that voluntary placement is unnecessary and services are not mandated.

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1) But also DFY and the Department of Mental Health.

This hearing procedure would be charged only with the review of the department of social service's actions. Its purpose would not include a determination of fault on the part of parent or juvenile, nor would its jurisdiction extend to compelling the involuntary placement of the child or the involuntary participation of the parent or child in service programs. All of those actions are, however, and would remain, available under alternative jurisdictions.

Recommendation II

Family court jurisdiction over truant minors shall be limited to those who have been absent 20 out of the 60 days preceding the filing of the petition and only after documented attempts at resolution through nonjudicial procedures. These attempts may include, but are not limited to, appropriate: referrals to the Committee on the Handicapped; provision of remediation as required by regulation; referral to alternative education programs; and referral to community-based agencies. The court shall also be authorized to order districts to provide appropriate and specific educational remedies for truants.

Comments

We recommend retention of family court jurisdiction over truancy because we believe that the court's authority is necessary to maintain the compulsory education laws. Nonetheless, that authority should be the last, and not the first, recourse in truancy allegations.

The lack of a standard in the current jurisdictional basis over PINS/truancy results in its extensive overuse and abuse. The requirement of documentation by the petitioner will assure that truancy is treated first as an educational problem —that is, that schools will be required to try all the nonjudicial alternatives available to them before turning to family court. If petitioners in cases involving minor truancy are denied access to the court, the limited resources of family court will be (and should be) concentrated on the most serious habitual truancy cases.

Recommendation III

The power of the police to take a runaway into limited custody shall be retained, but circumscribed to limit the duration of custody to six hours. Within that time, the child shall be taken to an emergency shelter or a runaway program or, if he is willing, released to the custody of his parents.

The powers and duties of runaway programs pursuant to Sections 532 et. seq. of the Executive Law shall apply to emergency shelter programs receiving runaways.

Comment

While many have expressed legitimate concern about the lack of current jurisdiction to hold runaways in secure detention, our own study of secure detention demonstrates that it has neither the services nor the outreach necessary to help runaways to be reunited with their families. Runaway shelters, on the other hand, have a 50% nation-wide record of returning children to their families. Because they are noncoercive, runaway programs are able to retain youngsters who resist authority and have histories of running away from home and placements.

Much of the concern about runaways relates to the lack of appropriate mental health services for highly-disturbed children. Here, we believe, it would be more appropriate to conduct an independent review of the adequacy mental health law and services than to attempt to address this profound problem through secure detention.

Recommendation IV

The Family Court Act shall be amended to provide a procedure to petition for court review of alternative living arrangements. A child or parent may petition the court to approve an alternative residential placement in cases where the parent and child cannot agree, or in cases where the child is living in an informal (non-foster care) alternative.

The hearing on the petition shall be limited to the issue of resolving disagreements over shelter in such a way as to assure the child's safety and to clarify certain legal issues: nothing shall be construed as empowering the court to extend jurisdiction beyond the orders enunciated in this part, or to make any living arrangements over the objection of the juvenile.[2)]

At a hearing on the petition to approve the alternative residential placement, the court shall appoint counsel for the child and shall:

1. *Approve an alternative residential placement where the juvenile resides or wishes to reside, unless it is proved by a preponderance of the evidence*

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2) This recommendation is drawn in a slightly expanded form from Part V of the IJA/ABA Draft Standards Relating to Non-Criminal Misbehavior, and the Recommendations of the Chicago Law Enforcement Study Group in Promises, Promises.

that such residence does not meet the minimum standards for the safety and welfare of the child;

2. *Where such proof is sustained, the court may place the child in the care of a willing relative; order DSS to take the child into foster care; or order the child to return home.*

Upon the approval of the alternative living arrangement or placement in foster care or return to the home, the court may order (for purposes of reconciliation) mandated preventive services for the parents and the juvenile. The court shall have continuing jurisdiction to review the alternative living arrangement periodically, but at least every 12 months, until the child returns home or turns 18.

Comment

This court review procedure addresses:

1. The need of the juvenile for court assistance in obtaining a shelter alternative to that which the family provides.
2. The need for legal sanction of alternative residences for children residing out of home (even with express or implied parental consent), and especially the need to clarify some of the pressing legal problems regarding residency and financial obligations without the unnecessarily complicated process required by foster care.
3. The need of parents, whose children have a known alternative residence, to have an official recourse for determination as to the health and safety of that residence.

RECOMMENDATIONS TO STRUCTURE PLANNING AND COORDINATION OF SERVICE DELIVERY

The recommendations which follow do not contemplate a new state funding system for service provision. One of the major impediments to PINS reform has always been the argument that it must be preceded by assured funding for services. However, it is our position that, through the Child Welfare Reform Act, the state has already established both a requirement for service and a funding system which gives counties an enriched reimbursement for provision of preventive services. Nonetheless, some statutory changes, including, as mentioned in Recommendation I, the strengthening of family court authority to order specific services, are required to assure the service delivery contemplated by the Child Welfare Reform Act.

Recommendation V

The statutory language governing local Comprehensive Planning by youth bureaus and Consolidated Services Planning by DSS shall require joint participation of all agencies and officials with responsibility for the adolescent population. These shall include, but are not limited to, the Office of Mental Hygiene, the Department of Health, school districts, the Office of Mental Retardation and Developmental Disabilities, Probation, the youth bureau and the police, and the Runaway Coordinator.

A county's comprehensive plan for adolescents at risk shall describe existing programs, identify those which are needed and not available, set priorities among desired services, and establish a systematic procedure for developing and funding new services. Comprehensive planning should also address the training needs in the community, especially in the use of existing laws and proceudres by police, probation, and school officials. The planning process shall also be required to generate interagency service plans which maximize access to community programs.

At the state level, representatives from the above-mentioned agencies and from the Runaway Advisory Council shall participate in developing and coordinating comprehensive and complementary policies and procedures for joint planning at the local level, and for reviewing county comprehensive plans for adolescents at risk and making recommendations for DSS and DFY approval.

Comment

New York State's juvenile services network is perhaps the most complicated in the country. Services are provided and funded through multiple parallel systems—the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities, youth bureaus, the Division for Youth direct local assistance, DFY Supplemental Delinquency Prevention Programs, the State Education Department, the Department of Social Services, the Health Department, the Office of Vocational Rehabilitation. The United Way is also an important funder of many relevant services. Each of these has its own regulatory system, licensing requirements, and eligibility standards. The major actor in PINS-type cases is probation, which has its own policies and responsibilities for diversion but has no input into the service system.

This fragmentation makes the casework task unnecessarily complicated and also takes its toll in social and foster care costs. Many placements which could

have been avoided occur because the services to prevent them were not available. However, some apparent "gaps" in services may simply be inadequate access mechanisms. Comprehensive planning will identify true gaps, as well as duplicative services, and will assure that existing services are known by, and available to, the community.

Basic to the development and funding of new programs is the knowledge of the existing funding conduits and the requirements for their use. The comprehensive planning process can also assure that information about various funding programs is shared and then used to increase the range of services.

Recommendation VI

Local departments of social services shall develop interagency service agreements for use of the services to mandated cases as required under the Child Welfare Reform Act.

Comment

The Child Welfare Reform Act mandates provision of services for children (including adolescents at risk of placement) and their families. The circumstances described in the state's Utilization Review criteria, under Parent Service Needs and Child Service Needs, apply to many of the family and personal situations of PINS-type youth: "the risk of serious physical or emotional harm due to an emotional, mental, physical or financial condition of the parent or caretaker," and "behavior which results in severe management problems in the home, school, or the community," and "behavior which presents a serious danger to other people or to the child himself." The local department of social services is responsible for determining if a case meets the criteria set out in the Utilization Review and is therefore eligible for services funded through the Act's enrichment reimbursement formula. Thus, CWRA funds cannot be tapped without the cooperation and approval of DSS. If an adolescent intake unit is located in any agency other than the department of social services, an interagency agreement is essential. The initiative taken by Suffolk and Monroe Counties in developing such agreements and defining mutual and complementary responsibilities should be followed by other counties.

Recommendation VII

Each county shall maintain an adolescent intake unit to which parents, older children, and others could turn for help.

Comment

In the absence of family court jurisdiction, counties must establish an intake site for PINS-type problems. Assessment, evaluation, case planning, referral, and follow-up should be among the services provided to youth and families in crisis by that unit. The unit must have the capacity to arrange for immediate shelter and intensive child and family services.

Given the centrality of the Child Welfare Reform Act's preventive services requirement, the department of social services might be the logical place for intake. However, many counties might determine that probation's experience with adolescents and their families makes it the agency best prepared to assume this task and choose to continue using probation intake as the central adolescent intake unit.

Recommendation VIII

Each county shall provide 24-hour crisis intervention, emergency shelter capacity, and family dispute mediation.

Comment

Currently, detention is used as shelter when a child cannot, or will not, return home. Since detention provides no family services or counseling, its use can be justified in only those cases where there is danger that the child will not appear in court. Furthermore, OJJDP regulations for funding prohibit the use of secure detention for runaways, even if there is danger that they will not be available for court. It is, therefore, vital that communities develop temporary and emergency shelter programs which offer the casework services necessary to resolve immediate crises and encourage reunification. Clinically, the moment of crisis—when the child runs away or is thrown out of home—is the moment when services are most effective and therefore must be immediately available.

While intake, crisis intervention, emergency shelter, and mediation may be provided separately, they could also be provided under the auspices of one agency. The important point is that they be immediately and easily available. The form that each service will take should depend upon the size, resources, and needs of the county. It is important that final legislation be flexible enough to allow counties to determine what will work best for them. Since these three services

are "preventive" in nature, contracts should be fundable under the CWRA. Additional and complementary methods of funding include Runaway and Homeless Youth Act programs and Division for Youth local assistance grants.

Conclusion

These recommendations have focused on two issues: jurisdictional changes and techniques for assuring availability and delivery of services. It is our conclusion that most PINS cases fall within the purview of the child welfare system and that their entry, today, through the route of the juvenile justice system is an unnecessary detour. The complexities of the service issues which PINS cases present suggest that solutions will not be easy. The process of developing a more constructive policy for children and family services must include a variety of participants and must begin with the recognition that the current system is not working. It is our hope that this paper and its proposals will be not just a stimulus for a discussion of alternatives to PINS, but rather a catalyst to the achievement of long needed reform.

APPENDIX A

Placement Costs

Placement is expensive. Costs range[1] from the low of approximately $8,000 annually for DSS family foster care and $6500 for DFY family foster care to $27,600 for DFY group homes and $20,000 for DSS-paid[2] group homes, and $30 to 45,000 for DSS-paid institutional care.[3]

When a child is placed as a result of Article 7 (JD and PINS) proceedings, the expense is borne by the social service system (county and state with some federal contribution for AFDC eligibles). A portion of the maintenance cost in those placements may be charged to the family, with the parental share varying according to the family's income. In addition, if the child is found by the Committee on the Handicapped to have a handicapping condition, the school district in which the child resides is required to reimburse the social service department for a portion of the educational costs of that placement.

When a placement is made through the Committee on the Handicapped, the educational costs are the responsibility of the education system (local district and state) but the maintenance charges are covered by the social service system. Because federal education law (The Education of All Handicapped Children Act) requires that a free appropriate education be provided to handicapped children, placements made through the Committee on the Handicapped may not involve a charge to the parent.

Nonetheless, it is often the case that the same child could be placed through either the COH or the family court. This raises issues regarding options in placement. At the state level, the departments of education and social services are working together to develop a consistent list of schools, but the coordination of activities forseen in the Institutional Schools Act has still been only sporadically implemented at the local level. Thus, the placement options available through Article 7 proceedings have been more limited than those offered through the education system: certain private schools, for instance, are not eligible for payment through the social service system.

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(1) While the costs given above are not necessarily exact, they are a good approximation and accurately suggest the differences among the various categories of care.

(2) This figure assumes education in the public schools.

(3) These figures assume education in an on-campus school and thus include $10,000 for tuition costs.

There is thus a dual advantage to the family in Committee on the Handicapped placements over Article 7 placements. Not surprisingly, more than one probation officer has commented to us that well-to-do parents know how to work their way through COH procedures to assure that placements for their children are made via that route. But working class parents, often unsophisticated in the use of COH procedures, turn instead to the family court for assistance and then find themselves charged for the placement. In addition, their children may not have the same placement opportunities they would have had through the Committee on the Handicapped.

The possibility of family responsibility for a portion of the cost of placement can work in two ways. Probation departments report that in some cases a preliminary discussion of anticipated charges leads to withdrawal of the petition. When that happens, unless there are grounds for a neglect petition, even if it is against the child's best interest to remain in the family, there is little the probation department can do. On the other hand, probation also reports that in some cases a discussion of anticipated charges is enough to convince hitherto uncooperative parents to participate in services in order to prevent placement.

APPENDIX B

Glossary of Terms[1]

Disposed Petition

In the nomenclature of OCA reporting, a disposed petition means a case in which a petition has been filed and all action completed, i.e., no further action remains to be taken. This must not be confused with dispostion (see No.7 below).

1. Probation Intake. This is the first step in a PINS proceeding. Intake officers decide whether to send a case to court or to adjust. They have broad discretion in this decision. If an intake officer decides a case is inappropriate for family court, he has several adjustment options.

Adjustment is defined in the State Division of Probation's Commentary[2] as:

> *The definition of Adjustment Process specifies the voluntary concurrence of the potential petitioner and the potential respondent as a prerequisite condition for this process. The act or activities used to resolve the complaint may include, but are not limited to, a reprimand, counseling, conciliation services from a probation officer, written voluntary agreements between the potential petitioners and potential respondents, restitution or community services, the use of services from community agencies, and the direct referral to a community agency.*

Adjustment may be accomplished rapidly in a few meetings or it may require a prolonged period of time. In some counties cases falling into the second category are referred to a special diversion unit.

2. Filing of Petition. The petition is the analog of the accusatory instrument in the adult system. It forms the basis for family court jurisdiction and the initiation of formal proceedings.

3. Remand. After a petition is filed, the respondent may be remanded to nonsecure detention or the judge may order the respondent to the care of a medical or psychiatric institution for examination (Family Court Act §251).

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(1) The format of this glossary was suggested by the "Delinquency and PINS Case Processing Procedure/Glossary of Terms" in Vera, pp. xxvi-xxxiv.

(2) Commentary on Part 354 of the General Rules Intake, Division of Probation Juvenile Justice Unit (June, 1982) p. 2.

4. Dispositional Options. Not all cases proceed to fact-finding. Before that stage, the judge may decide to:

A. Dismiss. Dismissal is most often the result of the petitioner's failure to appear or decision to withdraw the petition.

B. Adjourn in contemplation of dismissal (ACD). The adjourment may be for a period of up to six months, but the case may be recalled by the court at any time during the period for a violation of the conditions of the court. Those conditions usually include such instructions as: attend school regularly, obey parents, observe reasonable hours.

5. Fact-finding. This is the first part of a two-part adjudication process. The purpose of the fact-finding hearing is to determine whether or not the juvenile committed the acts alleged in the petition. This determination can be accomplished either by plea (i.e., admission) or a nonjury trial.

6. Probation Investigation and Report (I & R). Between fact-finding and disposition (sentencing) the judge may request that probation investigate the situation of the juvenile and his family to develop a Social Investigation. The resulting 'social history' usually includes information on the present offense, the family history, the educational background, and the physical and mental health of the child. The report is the basis for probation's dispositional recommendation to the judge. That recommendation is not binding on the judge but provides the bulk of the information available to the court.

7. Disposition. This is the second part of the two-part adjudication process. At the dispositional hearing, the judge determines if the juvenile requires supervision or treatment and specifies what form that treatment may take.

A. Suspended judgment. The juvenile has been adjudicated as a PINS but the judge declines to enter the judgment and instead imposes conditions for the one-year period of the suspension of judgment. Conditions may include: attend school regularly, obey parents, observe reasonable hours, make restitution, etc. In most cases, there is no court monitoring of this plan.

B. Probation. The term may be for a maximum of one year but may be extended to an additional year. It includes conditions imposed by formal court order: obey parents, attend school regularly, obey parental curfew, meet regularly with probation officer, and other conditions that may be appropriate for the case.

C. Placement. A PINS may be placed with the Commissioner of Social Services or the Division for Youth for up to 18 months. There may be successive one-year extensions granted on a modification petition until the juvenile reaches 18. (With the concurrence of the PINS, the placement may be continued until his/her 21st birthday.)

8. Full dispositional hearing. If either the petitioners or the respondents disagree with the court plan, they may request a full testimony hearing on the merits of that plan. The decision of the judge at this hearing forms the basis for any appeal that might be filed. (Very rarely is there an appeal of a PINS case.) At the full dispositional hearing, the validity of the probation recommendation is the item in question. The PINS is entitled to representation. Usually these hearings occur when either the parent or the child is opposed to a recommendation of placement.